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NO. 92CV0735

RAYE N. BLANCHARD, IND. : IN THE DISTRICT COURT OF  
AND AS THE :  
REPRESENTATIVE OF THE :  
ESTATE OF THOMAS H. :  
BLANCHARD DEC'D, :  
ET AL. :  
VS. : GALVESTON COUNTY, TEXAS  
BROWN & WILLIAMSON :  
TOBACCO CORPORATION, :  
ET AL. : 212TH JUDICIAL DISTRICT

DEPOSITION OF DAVID W. SPRADLEY  
TAKEN ON MARCH 30, 1993

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Mr. Robert G. Taylor, II

SBN 19733000

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50837 4504

I N D E X

THE WITNESS:                      DAVID W. SPRADLEY

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2        Exhibit No. 7 ..... 64  
3        (Defendant R. J. Reynolds Tobacco Company's  
4        Response to Plaintiffs' Pro Forma Subpoena  
5        Duces Tecum)

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9 Shook, Hardy & Bacon  
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24 Arnold & Porter  
25 1700 Lincoln Street  
Denver, Colorado 8029326 FOR THE DEFENDANTS H.E.B. GROCERY CO.;  
27 H.E.B., INC.; MAVERICK MARKETS, INC.; FOOD  
28 KING CORP.; THE KROGER CO.; THE GROCER'S  
29 SUPPLY CO., INC.; GROCER'S SUPPLY  
30 INSTITUTIONAL CONVENIENCE, INC.:31 Mr. Michael Hendryx  
32 Ms. Margaret Banks  
33 Tucker, Hendryx & Gascoyne  
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## 1 A P P E A R A N C E S (CONTINUED)

2  
3 FOR THE DEFENDANT BROWN & WILLIAMSON TOBACCO  
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8 THE VIDEOGRAPHER:9 Mr. Jeff Crawford  
10 Legal Media Systems, Inc.  
230 Westcott, Suite 200  
Houston, Texas 7700711  
12 ALSO PRESENT:13 Mr. Dave Harrold  
14 Lorillard Tobacco Company15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
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1                   The oral videotaped deposition of  
2       DAVID W. SPRADLEY was taken on March 30,  
3       1993, beginning at 9:25 a.m., in the offices  
4       of Vinson & Elkins, First City Tower,  
5       1001 Fannin, 36th Floor, Houston, Harris  
6       County, Texas, before Becky Serrato, a  
7       Certified Court Reporter and Notary Public in  
8       and for the State of Texas, pursuant to  
9       Notice, the Texas Rules of Civil Procedure,  
10      and the following stipulation and waiver of  
11      counsel:

12                   IT WAS STIPULATED AND/OR AGREED  
13      that the deposition is to be signed by the  
14      witness before any Notary Public or officer  
15      authorized to administer oaths.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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1 THE VIDEOGRAPHER: Today's date is  
2 March 30th, 1993. The time is 9:26 a.m.  
3 We're on the record.  
4  
5

6 DAVID W. SPRADLEY  
7 was called as a witness and, having been  
8 first duly sworn, testified as follows:  
9

10 EXAMINATION

11 BY MR. TAYLOR:

12 Q. Would you state your full name, please, sir?

13 A. David Wayne Spradley, S-p-r-a-d-l-e-y.

14 Q. Mr. Spradley, how are you currently  
15 employed?

16 A. I'm employed as division manager,  
17 R. J. Reynolds Tobacco Company.

18 Q. And what is the business of R. J. Reynolds  
19 Tobacco Company?

20 A. Distribution and sales of R. J. Reynolds  
21 Tobacco Company products.

22 Q. Do all of your products contain tobacco?

23 A. Yes.

24 Q. In other words, do you sell anything that's  
25 not related to tobacco?

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- 1 A. The tobacco company does not.
- 2 Q. Are you responsible for anything other than
- 3 the sale of tobacco?
- 4 A. No.
- 5 Q. Do you have anything -- R. J. Reynolds itself
- 6 is in obviously many other fields, are they
- 7 not?
- 8 A. Yes.
- 9 Q. I take it R. J. Reynolds Tobacco Company, is
- 10 it a separate corporation?
- 11 A. Yes, it is.
- 12 Q. Is it wholly owned by -- who is it owned by?
- 13 A. Legally, I guess, it's RJR Holdings,
- 14 RJR Nabisco, Incorporated.
- 15 Q. I take it you, probably through various stock
- 16 option plans or through some retirement
- 17 plans, have stock in your company?
- 18 A. Yes, I do.
- 19 Q. Who's the stock in?
- 20 A. The stock in? RJR Nabisco.
- 21 Q. And RJR Nabisco itself is a very diversified
- 22 company, is it not?
- 23 A. Yes, it is.
- 24 Q. How long have you worked for RJR -- could I
- 25 call it RJR instead of saying R. J.

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- 1 Reynolds?
- 2 A. Uh-huh.
- 3 Q. Is that okay with you?
- 4 A. I call it RJR.
- 5 Q. Okay. -- RJR Tobacco Company?
- 6 A. Twenty-one-plus years. My anniversary date
- 7 would be September 7th, 1971.
- 8 Q. And that is all with the tobacco company?
- 9 A. Yes, it is.
- 10 Q. Prior to RJR Tobacco Company, for whom did
- 11 you work?
- 12 A. For a short time for Peden Iron & Steel.
- 13 Q. And who prior to Peden Iron & Steel.
- 14 A. What part of it?
- 15 Q. Who? What company prior to Peden Iron &
- 16 Steel?
- 17 A. Armco Steel Company.
- 18 Q. How long were you with Peden?
- 19 A. About four to five months.
- 20 Q. That was a short time.
- 21 A. It was an interim job till the Reynolds job
- 22 came open.
- 23 Q. How long were you with Armco?
- 24 A. Approximately two years.
- 25 Q. Prior to Armco for whom did you work?

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- 1 A. Let me think back. I was in college.  
2 Part-time jobs. Worked for Weingarten's.  
3 Q. Where did you go to college?  
4 A. University of Houston.  
5 Q. Are you from Houston originally?  
6 A. Yes.  
7 Q. I take it when you were with Armco, you  
8 worked here in Houston?  
9 A. Yes.  
10 Q. What was your job with Armco?  
11 A. I was a clerk in the stores department.  
12 Q. And what about with Peden Iron & Steel?  
13 A. I was a clerk and buyer in the purchasing  
14 department.  
15 Q. Now, when you first started with RJR Tobacco  
16 Company, what was your role or what was your  
17 job?  
18 A. I was -- my title was sales representative.  
19 Q. Sales representative?  
20 A. That's correct.  
21 Q. Did you live here in Houston?  
22 A. Yes, I did.  
23 Q. Have you lived in Houston all your life?  
24 A. All but five years.  
25 Q. What five years were you not here?

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- 1 A. From 1980 to '85.
- 2 Q. And where did you live then?
- 3 A. San Antonio, Texas.
- 4 Q. Were you with RJR --
- 5 A. Yes.
- 6 Q. -- Tobacco Company at that time?
- 7 A. Yes.
- 8 Q. As sales representative when you first
- 9 started with RJR Tobacco Company, what area
- 10 did you cover?
- 11 A. I covered area from just about anywhere
- 12 downtown east to Galveston County at various
- 13 times.
- 14 Q. Did you cover any part of Galveston County?
- 15 A. Yes, I did.
- 16 Q. What part of Galveston County did you cover?
- 17 A. I called on stores in League City,
- 18 Texas City, LaMarque, Galveston, Hitchcock,
- 19 various parts of Galveston County.
- 20 Q. And you say -- when you called on stores,
- 21 what did you do when you called on those
- 22 stores?
- 23 A. Called on stores servicing the products.
- 24 Q. Did you sell RJR Tobacco Company products?
- 25 A. Yes.

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- 1 Q. And what all cigarettes does RJR Tobacco  
2 Company sell?
- 3 A. Winston, Salem, Camel, Vantage, Now, More,  
4 and various other private label cigarettes.
- 5 Q. Have those been since the last 21 years?
- 6 A. No.
- 7 Q. Over the last 21 years, I'm sure the brands  
8 have changed, have they not?
- 9 A. Yes.
- 10 Q. But Winston, Salem, Camel have been  
11 consistent?
- 12 A. Winston, Salem, Camel, Vantage, and Doral  
13 have been consistent.
- 14 Q. During the 21 years you have added additional  
15 brands?
- 16 A. Yes, we have.
- 17 Q. Are those brands all manufactured by  
18 R. J. Reynolds Tobacco Company?
- 19 A. Yes, they are.
- 20 Q. Have you deleted any brands?
- 21 A. We've deleted some brands over the years.
- 22 Q. Do you recall which ones have been deleted?
- 23 A. Oh, there's several. Real, the Real brand;  
24 Winston Menthols, a style of Winston;  
25 Dakota. I'm trying to think of any other

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1 test market brands. I've been involved in  
2 numerous test market brands in the Houston  
3 market.

4 Q. Does the Houston market encompass the  
5 Galveston, also?

6 A. Yes, it does.

7 Q. And you've used Galveston County as a test  
8 market from time to time?

9 A. Yes, we have.

10 Q. And what do you mean by a test market?

11 A. Well, the company develops a brand of  
12 cigarettes that they'd like to see if they  
13 would go over in the marketplace. They would  
14 bring it into the marketplace and put it out  
15 for sale to consumers. And the results or  
16 performance of that brand would be judged by  
17 the executive management of the company as to  
18 whether or not we would pursue it or expand  
19 the market.

20 Q. And for -- is it a market test? Is that what  
21 it is?

22 A. It's a market test.

23 Q. And you use Galveston County as part of your  
24 market test?

25 A. If it was in -- because Galveston County is

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1 in the Houston region, if we test market a  
2 brand, it's usually at least on a regional  
3 basis. And it would be encompassed in --  
4 Galveston County is part of the Houston  
5 region.

6 Q. The people that are citizens of Galveston  
7 County were used as part of your test, were  
8 they not?

9 A. Yes.

10 Q. Part of the test results that management  
11 evaluated in determining whether or not to  
12 continue to sell a particular brand of  
13 cigarettes or to sell any brand of  
14 cigarettes?

15 A. That's correct.

16 Q. They were human guinea pigs to that extent,  
17 were they not?

18 A. No.

19 Q. They were not?

20 A. I wouldn't say so.

21 MS. VENSO: I'm going to object  
22 that this is a venue deposition. And I don't  
23 mind him answering anything about what  
24 products we sell, where we sell them. But if  
25 we get into the --

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1 MR. TAYLOR: I think the test is  
2 whether you're doing business there on a  
3 permanent basis, according to the Supreme  
4 Court.

5 MS. VENSO: I agree.

6 MR. TAYLOR: And if you're using  
7 test markets and using the citizens as  
8 tests --

9 MS. VENSO: But he's not a  
10 liability witness, and that's my objection.

11 MR. TAYLOR: I'm not asking  
12 liability questions.

13 Q. (By Mr. Taylor) You used the people of  
14 Galveston County as your test, did you not?

15 MS. VENSO: You can answer that.  
16 A. Yes. As guinea pigs? Is that the  
17 statement? I'm just -- would you restate the  
18 question.

19 Q. (By Mr. Taylor) Did I say that that time?

20 A. You said it earlier, and I just -- I wanted  
21 to --

22 MS. VENSO: He didn't use it that  
23 time.

24 THE WITNESS: Okay. Very good.

25 Q. (By Mr. Taylor) But you can keep talking

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1 about it, if you'd like. That's up to you.  
2 Okay?

3 A. Well, I answered your question before, sir.

4 Q. Other than using the people of Galveston  
5 County as a test market, what other  
6 activities have you conducted in Galveston  
7 County over the past 21 years?

8 A. What other activities?

9 Q. Yes, sir.

10 A. Can you give me a specific line of what you'd  
11 like --

12 Q. What have you done in Galveston -- what has  
13 R. J. Reynolds Tobacco Company done in  
14 Galveston County other than use the people as  
15 a test?

16 A. Oh, we provide services to the retail stores  
17 so that our products are fresh and saleable  
18 to the ultimate consumer.

19 Q. And what kind of services do you provide to  
20 those stores, the retail stores down in  
21 Galveston County?

22 A. We rotate merchandise.

23 Q. You actually physically take -- your  
24 salespeople take cigarettes into Galveston  
25 County and other tobacco products and replace

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1        those products that are on the shelves?

2        A.     That are outdated or damaged.

3        Q.     Okay.   What else do you do in Galveston  
4                County?

5        A.     We put up displays in retail stores.

6        Q.     Okay.   What are your big -- what are your  
7                customers -- who are your customers in  
8                Galveston County?

9        A.     Who are our customers?   We have about 384  
10               retail outlets.

11       Q.     That you service?

12       A.     That we service.

13       Q.     Any wholesale outlets that you service in  
14               Galveston County?

15       A.     One.   But it's not really a wholesale  
16               outlet.   It's a direct account.   There's no  
17               wholesale --

18       Q.     What are your gross sales in Galveston  
19               County?

20       A.     I do not have that information.

21       Q.     In the millions?

22       A.     I couldn't even guesstimate.   I don't even  
23               look at that figure.

24       Q.     What are your gross sales for the Houston  
25               region?

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- 1 A. I don't have that information.
- 2 Q. Is that something that you don't concern  
3 yourself with, is the gross sales?
- 4 A. No. No.
- 5 Q. And as the division manager, you're not  
6 concerned with sales?
- 7 A. I'm concerned with the conditions of our  
8 products and the display of our products and  
9 the service we provide our retailers. But as  
10 far as dollar figures, I'm not concerned with  
11 that.
- 12 Q. The displays, are they property of  
13 R. J. Reynolds Tobacco Company?
- 14 A. As they're installed, they're property. But  
15 once we install them in the store, they  
16 become the property of the store.
- 17 Q. And then it's the store's problem to dispose  
18 of them after the sale promotion?
- 19 A. Typically that's true.
- 20 Q. But you take them down there and give them to  
21 the store?
- 22 A. That's correct.
- 23 Q. You decide how they're displayed?
- 24 A. Yes. Along with the consult -- the consent  
25 of the retailer.

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1 Q. You started to say "consultant." Do you have  
2 consultants involved?

3 A. Well, I said the "consent" versus "consult."

4 Q. Well, do you have consultants involved in how  
5 you market your products in Galveston  
6 County?

7 A. I wouldn't determine anybody that would be  
8 what you would call a consultant.

9 Q. Do you have marketing people that go down  
10 there and do any kind of studies in the  
11 market to see what's going to sell better in  
12 Galveston County?

13 A. I'm not aware of any.

14 Q. Do you have any advertising people in  
15 Galveston County?

16 A. No, not that I know of.

17 Q. You do a lot of advertisement in Galveston  
18 County?

19 A. We -- as a division manager, I'm in charge of  
20 a group of people that put up pieces of  
21 advertising in retail stores.

22 Q. How long has R. J. Reynolds Tobacco Company  
23 been doing business in Galveston County?

24 A. Well, our company was formed on or around  
25 1900.

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- 1 Q. Been in Galveston County since then?
- 2 A. I would assume so.
- 3 Q. Since 1900 or thereabouts?
- 4 A. Yes.
- 5 Q. And any plans on leaving Galveston County?
- 6 A. No.
- 7 Q. How many salespeople do you have in Galveston
- 8 County now?
- 9 A. Five sales representatives that work in that
- 10 area. Full-time representatives.
- 11 Q. Any of those salespeople live in Galveston
- 12 County?
- 13 A. Two.
- 14 Q. Two people that live in Galveston County --
- 15 A. That's correct.
- 16 Q. -- and three others that work the area?
- 17 A. That's correct.
- 18 Q. And I take it that one of their jobs is to go
- 19 out and find new accounts?
- 20 A. Yes. But we don't actually prospect. I
- 21 guess is the -- when you say "find new
- 22 accounts," we observe a new store opening on
- 23 a street. And we determine that that's
- 24 probably going to be a store that would sell
- 25 cigarettes across the counter to consumers.

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1 In other words, we see the Chevron sign or  
2 the whatever retail store sign go up, we  
3 would go into the store to see if we could be  
4 of service to them.

5 Q. Do you generally enter written contracts with  
6 them?

7 A. Yes, we do.

8 Q. And the salespeople have the authority to  
9 enter in those contracts with the purchaser  
10 of your goods?

11 A. Well, contracts or agreements. Most of those  
12 would be merchandising agreements.

13 Q. And what do those merchandising agreements  
14 generally provide?

15 A. Provide dollars to the retailer for space  
16 provided to Reynolds to place its displays or  
17 its products.

18 Q. Okay. So the products that are actually sold  
19 in the stores belong to R. J. Reynolds  
20 Tobacco Company?

21 A. No. They belong to the retailer.

22 Q. Well, you said you paid the retailer a price  
23 for space in the store to put in your  
24 products?

25 A. That's correct. To stock and display our

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1 products we manufactured, but they are the  
2 personal -- they are the property of the  
3 store.

4 Q. Does the store owner have to buy those  
5 products from you when you deliver them?

6 A. They buy them from the wholesaler.

7 Q. And who is the wholesaler?

8 A. Well, there's various wholesalers in town.  
9 Most of which or all of which that I know  
10 that are direct wholesalers are located  
11 outside of Galveston County.

12 Q. R. J. Reynolds Tobacco Company goes in and  
13 buys the space in a 7-Eleven store, for  
14 example, or a Kroger's or Food Giant or any  
15 of those other stores that are parties to  
16 these lawsuits; is that correct?

17 A. Yes.

18 Q. You go in and you actually buy the space from  
19 the store owner so that --

20 A. When you say "buy the space," we pay the  
21 store money to display our products in a  
22 certain spot.

23 Q. You lease a portion of a store from him?

24 A. Lease a portion of the store. I guess you  
25 could consider that.

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- 1 Q. And ones you lease from him, you have the  
2 absolute right of possession of that area, do  
3 you not, to the exclusion of others?
- 4 A. I have the absolute right to possession of  
5 that space?
- 6 Q. You're not going to go in and buy space for  
7 R. J. Reynolds tobacco products and let  
8 Philip Morris put theirs in your space, are  
9 you?
- 10 A. No.
- 11 Q. If the store owner let's Philip Morris put  
12 their cigarettes on your space, you're not  
13 going to pay him for the space?
- 14 A. That's correct.
- 15 Q. So it's your intent, when you go in and rent  
16 or lease this space from the store owner,  
17 that you have the absolute and sole  
18 possession of the space -- or that  
19 R. J. Reynolds Tobacco Company does?
- 20 A. Well, the space is the space of the  
21 retailer.
- 22 Q. Yes, sir. But you have the use, and you're  
23 renting the use of that space?
- 24 A. We are saying that we'd like our display in  
25 this space and we'll pay "X" number of

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- 1 dollars for that space.
- 2 Q. And if he puts Campbell's soup there, you're
- 3 not going to pay him, right?
- 4 A. That's correct.
- 5 Q. So it's your intent to lease absolutely that
- 6 space to use for your products. Fair?
- 7 A. I would say it is.
- 8 Q. And that money is paid by RJR Tobacco
- 9 Company?
- 10 A. That's correct.
- 11 Q. Then RJR Tobacco Company, though, doesn't
- 12 sell the cigarettes directly to the
- 13 retailer?
- 14 A. No.
- 15 Q. It goes through the wholesaler?
- 16 A. That's correct.
- 17 Q. Does RJR Tobacco Company have any interest in
- 18 the wholesalers in Galveston County or the
- 19 wholesalers that provide services to
- 20 Galveston County?
- 21 A. Any interest?
- 22 Q. Ownership or otherwise?
- 23 A. No.
- 24 Q. Management --
- 25 A. No.

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1 Q. -- or exercise any control over those  
2 wholesalers?

3 A. No.

4 Q. Do the wholesalers sell more -- or  
5 competitors' products in addition to  
6 R. J. Reynolds' products?

7 A. Yes, they do.

8 Q. But, for example -- give me the names of the  
9 wholesalers in -- that service Galveston  
10 County.

11 A. Some of the names of the wholesalers that  
12 service Galveston County?

13 Q. Yes, sir.

14 MS. VENSO: Is it all B&G?

15 THE WITNESS: No. We --

16 A. B&G Tobacco Company.

17 Q. (By Mr. Taylor) "BNG"?

18 MS. VENSO: B "and."

19 THE WITNESS: B&G.

20 MR. TAYLOR: B& -- with an  
21 ampersand?

22 MS. VENSO: Uh-huh.

23 A. McClain Southwest.

24 Q. (By Mr. Taylor) B&G Tobacco Company?

25 A. Uh-huh. I mean, I could give you a list of

Produced by RJRTC

in

FILE

1           probably 20 or 30 suppliers that call on  
2           stores, if that's what you're asking me to  
3           do.

4     Q.     That's what I'm trying to find. But you  
5           called them wholesalers earlier. Is that the  
6           same thing?

7     A.     Well, "wholesaler," "jobber." It's a term  
8           that we call as a -- it is a company that's  
9           licensed in the state of Texas to stamp -- to  
10          place tax stamps on the cigarettes bought  
11          directly from Reynolds Tobacco Company.

12    Q.     And that's the reason you have to go through  
13           the wholesaler or a jobber or supplier --  
14           whatever you want to call it -- correct?

15    A.     That's correct.

16    Q.     So they can place the tax stamps for the  
17           State of Texas on your cigarettes before  
18           they're sold, correct?

19    A.     That's correct.

20    Q.     And then they have to --

21    A.     But that's been traditionally done. That has  
22           not been changed for any reason.

23    Q.     Y'all have been doing that since 1900 --

24    A.     That's correct.

25    Q.     -- or thereabouts, correct?

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- 1 A. That's correct.
- 2 Q. Going to do it from now until far in the  
3 future as far as you know?
- 4 A. I hope so.
- 5 Q. R. J. Reynolds has no plans to stop doing  
6 that, to your knowledge?
- 7 A. No.
- 8 Q. So B&G Tobacco Company, is that the largest  
9 supplier of cigarettes to -- of  
10 R. J. Reynolds cigarettes to Galveston  
11 County?
- 12 A. I couldn't say that.
- 13 Q. Where are they located?
- 14 A. In Houston.
- 15 Q. What wholesalers or jobbers or distributors,  
16 or whatever you want to call them, do you use  
17 that are located in Galveston County?
- 18 A. None.
- 19 Q. None are in Galveston County?
- 20 A. That we use?
- 21 Q. That you use.
- 22 Now, RJR Tobacco Company makes  
23 their sales directly to the wholesaler?
- 24 A. That's correct.
- 25 Q. The wholesaler, in turn, puts tax stamps on

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- 1           them, on the packages?
- 2    A.    That's correct.
- 3    Q.    And then they -- do they actually make the
- 4           sales to the --
- 5    A.    That's correct.
- 6    Q.    -- 7-Eleven store?
- 7    A.    That's correct.
- 8    Q.    And does the 7-Eleven store owner have to buy
- 9           the cigarettes from them?
- 10   A.    That's correct.
- 11   Q.    But then the RJR Tobacco Company employees
- 12           service those accounts?
- 13   A.    That's correct.
- 14   Q.    So that if a local store operator or the
- 15           Kroger store, for example, in Galveston were
- 16           to buy ten cases of Winstons and they were
- 17           delivered cigarettes that expired or -- what
- 18           did you call it?
- 19   A.    Well, they're out of date. They're expired.
- 20   Q.    -- out of date on June 1 of 1993, the
- 21           R. J. Reynolds serviceman would go by on
- 22           June 2nd, see that nine of those cases were
- 23           still there out were out of date and replaced
- 24           those with fresh ones?
- 25   A.    That or if it was with that commodity, we'd

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1           probably ask them to return them to their  
2           warehouse. We deal with small quantities at  
3           retail stores. If it was nine cases of  
4           cigarettes, we would ask them to return them.

5       Q.     A half a case, then?

6       A.     All right. If it was a half a case -- as  
7           little as half a case, we would probably  
8           exchange that product out for fresh product  
9           off of our vehicle.

10      Q.     And then -- and you have your vehicles that  
11           operate in Galveston County?

12      A.     That's correct.

13      Q.     How many vehicles do you have that operate in  
14           Galveston County?

15      A.     I'd say five to six.

16      Q.     Other than R. J. Reynolds Tobacco Company  
17           products, do they carry anything else?

18      A.     No.

19      Q.     And they are authorized to actually go in and  
20           trade merchandise?

21      A.     That's correct.

22      Q.     Can you trade brands? For example, if  
23           somebody says, "Look. I've got a bunch of  
24           Salems sitting here and I'm not selling  
25           them. Could you give me more Winstons," can

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- 1           you trade those out?
- 2    A.    That's correct.
- 3    Q.    And that driver or -- is that the salesperson
- 4           that drives that truck?
- 5    A.    That's correct.
- 6    Q.    And he has the authority to make those kind
- 7           of trades?
- 8    A.    That's correct.
- 9    Q.    Does he have the authority to make direct
- 10           sales?
- 11   A.    Direct sales?
- 12   Q.    Yes, sir.
- 13   A.    He has product on his vehicle, and he can
- 14           sell that product to the retailer as a
- 15           service.
- 16   Q.    Who puts the stamps on those cigarettes?
- 17   A.    The wholesaler.
- 18   Q.    Oh, I see.
- 19   A.    We buy from the wholesaler. We act as a
- 20           representative or an arm of the wholesaler,
- 21           and we take the product out basically on a
- 22           consignment-type basis. We have it on our
- 23           vehicles. And then we, in turn, use that to
- 24           service the product we have in the field.
- 25   Q.    You said you acted as the arm of the

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1           wholesaler. Does R. J. Reynolds actually go  
2           down there and represent the wholesaler in  
3           the trade out of products and the maintaining  
4           the freshness of products?

5       A.   Not in the strictest sense of the word. I  
6           guess we would -- we purchase the product  
7           from the wholesaler to load on our vehicles  
8           so that we have product to service the  
9           retailer.

10      Q.   And you're actually providing the service to  
11           the retailer whose space you've rented?

12      A.   That's correct.

13      Q.   And you've rented space, I think you told me,  
14           three hundred and -- how many accounts do you  
15           have in Galveston County?

16      A.   I wouldn't say we would rent space in 380  
17           stores.

18      Q.   You have 380 stores that you service?

19      A.   That we service.

20      Q.   You don't rent space in all those stores?

21      A.   No.

22      Q.   How many of those stores do you rent space  
23           in?

24      A.   Couldn't tell you off the top of my head.

25      Q.   More than half of them?

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1 A. I would say approximately half. That's a  
2 rough guesstimate.

3 Q. In the stores that you do not rent space  
4 from, do you have written agreements with the  
5 others?

6 A. Not necessarily.

7 Q. Well, do you have other kinds of written  
8 agreements other than for the rental of space  
9 in stores?

10 A. Not really any other written agreement.

11 Q. Well, when you say "not really any other," it  
12 implies to me there may be something akin to  
13 the written --

14 A. Well, we don't call them rental agreements.

15 Q. I said "written." I'm sorry. "Written."

16 A. Okay. You said "rental." And I'm saying  
17 "written agreements"? We have merchandising  
18 agreements for space or for specific  
19 displays; or we also have some agreements  
20 where we would rebate, based on purchases, a  
21 certain amount of dollars.

22 Q. So you rebate -- is that in addition -- some  
23 people you rent space from, correct?

24 A. Uh-huh.

25 Q. Other people you just sign contracts for them

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1 to put displays, correct?

2 A. Right. Well, that's the same thing. And I  
3 wouldn't call it renting. I'd call it --  
4 it's a contract -- merchandising contract.

5 Q. Well, okay. But they agree to provide you so  
6 much space?

7 A. Right.

8 Q. And -- or they provide that you can display  
9 in one of your little trays or whatever --

10 A. Right. That's correct.

11 Q. -- your cigarettes?

12 A. That's correct.

13 Q. And they make that agreement with  
14 R. J. Reynolds Tobacco Company?

15 A. That's correct.

16 Q. Not with the wholesaler?

17 A. No.

18 Q. Then you have other agreements -- what was  
19 the other -- last kind that you said you  
20 have?

21 A. The only other agreement is an agreement to  
22 rebate a store based on the volume or the  
23 number of a particular product that they may  
24 sell during a time frame.

25 Q. Okay. Do y'all have any -- do any servicing

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1 of vending machines?

2 A. Not personally, we do not.

3 Q. R. J. Reynolds Tobacco Company does not?

4 A. No.

5 Q. So when we see vending machines -- the only  
6 connection with R. J. Reynolds and the  
7 vending machines is your products are in  
8 them?

9 A. The products are in them.

10 Q. You hope?

11 A. We hope.

12 Q. Sometimes I see vending machines that will  
13 have Winston's name on them or other tobacco  
14 companies' name on them.

15 A. Right.

16 Q. Do y'all pay for that advertisement that goes  
17 on there?

18 A. Not to my knowledge.

19 Q. Do you authorize somebody to use your name to  
20 advertise on there?

21 A. Well, most of those are -- the vending  
22 machine when it's purchased has that  
23 advertisement in it from the manufacturer.  
24 There must be a connection somewhere, but I  
25 don't know what that connection would be.

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- 1 Q. The billboards I see in Galveston County that  
2 have your products advertised on them, do  
3 y'all pay for those?
- 4 A. Reynolds Tobacco Company does.
- 5 Q. The magazine advertising that goes into  
6 Galveston County, is that Reynolds Tobacco  
7 Company, also?
- 8 A. Yes.
- 9 Q. In other words, is all the advertising, to  
10 your knowledge, that's done in Galveston  
11 County by R. J. Reynolds Tobacco Company  
12 products done by R. J. Reynolds versus  
13 the --
- 14 A. That or through an agency.
- 15 Q. Okay. Y'all do quite a bit of advertising in  
16 Galveston County, do you not?
- 17 A. Yes, we do.
- 18 Q. Do you know what the advertising budget is  
19 for Galveston County?
- 20 A. I sure don't.
- 21 Q. Who could give me the information as to the  
22 amount of gross sales in Galveston County  
23 over the last five years?
- 24 A. Someone in Winston-Salem in our --
- 25 Q. What about the amount of money spent on

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- 1 advertising?
- 2 A. Someone in Winston-Salem.
- 3 Q. None of those figures are available here in
- 4 Houston?
- 5 A. No.
- 6 Q. Do you know how many cases, cartons, whatever
- 7 you want to call it, of cigarettes are sold
- 8 in Galveston County?
- 9 A. Only through one supplier, one person there.
- 10 Q. Which person is that?
- 11 A. It's the Coast Guard base. That's the only
- 12 place that buys directly from
- 13 R. J. Reynolds.
- 14 Q. Okay. Do you know how much is sold in the
- 15 Houston region, to the suppliers in the
- 16 Houston region?
- 17 A. I wouldn't have that.
- 18 Q. How many cases are sold to the Coast Guard
- 19 base?
- 20 A. I would say approximately ten cases a
- 21 month --
- 22 Q. And how many --
- 23 A. -- on average.
- 24 Q. -- cartons of cigarettes in a case?
- 25 A. Sixty.

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- 1 Q. So that's 600 cartons of cigarettes per  
2 month?
- 3 A. Uh-huh.
- 4 Q. Correct?
- 5 A. Approximately. I don't have those figures in  
6 front of me, but that's a pretty close  
7 guess.
- 8 Q. Why do y'all sell directly to the Coast Guard  
9 base?
- 10 A. Because it's listed as a direct account, and  
11 our company has done business with military  
12 installations for many years.
- 13 Q. And they don't pay any state tax, do they?
- 14 A. That's correct.
- 15 Q. So you don't have to go through the supplier  
16 or the middle man, or whatever you want to  
17 call it, to put the tax stamps on it?
- 18 A. That's correct.
- 19 Q. And how long have you sold to the Coast Guard  
20 base in Galveston County, Texas?
- 21 A. To my knowledge, since nineteen eighty --  
22 or '71.
- 23 Q. Since you've been there?
- 24 A. Since I've been there. And I'm sure before  
25 then.

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1 Q. Is there a contract with the Coast Guard  
2 base?

3 A. Contract?

4 Q. Written contract?

5 A. The only contract we have with the Coast  
6 Guard base is for merchandising space.

7 Q. No plans to cancel that contract?

8 A. No.

9 Q. Is it fair to say that you have at least --  
10 at least how many people are in Galveston on  
11 a daily basis, Galveston County, for  
12 R. J. Reynolds Tobacco Company?

13 A. Averages three to four.

14 Q. Spend eight hours a day there or longer?

15 A. I would say that. On an average, I'd say  
16 three to four people a day, up to eight  
17 hours.

18 Q. So we're talking somewhere between 24 and 32  
19 hours per day every day that somebody for  
20 R. J. Reynolds is in Galveston County?

21 A. I couldn't tell you exactly.

22 Q. I'm sorry. Twenty-four to 32 man-hours each  
23 and every day are spent by R. J. Reynolds  
24 personnel in Galveston County?

25 A. That would be an approximate number.

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1 Q. And these are all people that have authority  
2 to enter into these merchandising agreements  
3 we talked about?

4 A. No.

5 Q. Who has the authority to enter into the  
6 merchandising agreement?

7 A. The sales reps that would be in there.

8 Q. And how many sales reps do you have in  
9 Galveston County?

10 A. Average two.

11 Q. Per day?

12 A. Average two per day, maybe three. Because of  
13 the way the territories are set up, a person  
14 may work in Harris County part of week and  
15 Galveston County. The boundaries overlap.  
16 We do not use a strict boundary line for the  
17 county line.

18 Q. Would it be fair to say, then, that on an  
19 average of 16 to 32 man-hours -- I'm sorry --  
20 16 to 24 man-hours per day, R. J. Reynolds  
21 has people in Galveston County with authority  
22 to enter into the merchandising agreements we  
23 talked about earlier, the rental agreements?

24 A. Yes.

25 Q. It has the authority to supply your product

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1 to various people in Galveston County?

2 A. Yes.

3 Q. In other words, in all fairness,

4 Mr. Spradley, R. J. Reynolds has a constant  
5 presence in Galveston County, do they not?

6 A. We have a constant presence with our --

7 Q. You have people there 24 hours of every day  
8 because some of them live there. You've got  
9 two people that live there?

10 A. Right. Two people that live there. But 24  
11 hours a day doesn't -- when that person is  
12 not working, they're not representing  
13 R. J. Reynolds.

14 Q. But you've got multiple people on a daily  
15 basis in there. And I think that you've got  
16 people with ~~contracting~~ ability in Galveston  
17 County, 16 to 24 man-hours per day on the  
18 average. And you've got total people in  
19 the -- or are these people different, that  
20 are there for the 24 to 32 hours a day?

21 A. Those are just part-time employees. Those  
22 are the balance.

23 Q. What do the part-time employees do?

24 A. Just detail work. They just clean, dust,  
25 replace advertising, put on coupons.

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1 Q. What kind of advertising do they replace?

2 A. The displays that we've talked about. The  
3 advertising changes periodically. It gets  
4 dusty. It gets shopworn. And they would  
5 replace that and refurbish it, improve the  
6 appearance.

7 Q. Do you have people that are giving away free  
8 cigarettes in Galveston County?

9 A. No.

10 Q. Except when you're doing test markets?

11 A. I haven't given away samples in Galveston  
12 County that I know of.

13 Q. How often do you test markets in Galveston  
14 County?

15 A. I can't determine that. We've had test  
16 markets, but I couldn't give you how often we  
17 do that.

18 Q. Have you been over the answers to the request  
19 for admissions that R. J. Reynolds has  
20 filed?

21 A. Yes.

22 Q. Were you responsible for answering any of  
23 those?

24 A. Yes.

25 Q. Good.

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1 MR. TAYLOR: Let's mark that --  
2 first of all, let's do some housekeeping  
3 first.

4 THE WITNESS: Can I speak to  
5 counsel, please?

6 MR. TAYLOR: Sure. Anytime you  
7 want to.

8 THE WITNESS: I'd like a break.

9 MR. TAYLOR: You got it.

10 THE VIDEOGRAPHER: 9:56 a.m. We're  
11 off the record.

12

13 (A recess was taken.)

14

15 (Instruments were marked Spradley  
16 Exhibit Nos. 1 and 2 for  
17 identification.)

18

19 THE VIDEOGRAPHER: 10:09 a.m.

20 We're on the record.

21 Q. (By Mr. Taylor) Mr. Spradley, we had  
22 requested that your employer, R. J. Reynolds  
23 Tobacco Company, provide us with "the person  
24 most knowledgeable regarding venue in  
25 Galveston County, Texas, including but not

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1 limited to the person most knowledgeable of  
2 those individuals who engage or perform  
3 activities for R. J. Reynolds Tobacco Company  
4 in Galveston County, Texas."

5 Are you being tendered to us as  
6 that person?

7 A. Yes.

8 Q. Now we have discussed certain activities that  
9 R. J. Reynolds Tobacco Company performs in  
10 Galveston County, Texas, already, have we  
11 not?

12 A. Yes, we have.

13 Q. Are there any other activities that  
14 R. J. Reynolds Tobacco Company performs or  
15 engages in in Galveston County, Texas, that  
16 we have not yet discussed?

17 A. Possibly. I --

18 Q. Well, generally the categories we've talked  
19 about are advertising, have we not?

20 A. That's correct.

21 Q. Testing?

22 A. Correct?

23 Q. Test marketing?

24 A. Right.

25 Q. The servicing of -- actually going in and

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- 1 leasing or renting of space in retail  
2 stores?
- 3 A. Signing merchandising contracts in stores..
- 4 Q. Entering into merchandising contracts in  
5 stores --
- 6 A. Agreements.
- 7 Q. -- and agreements?
- 8 A. Uh-huh.
- 9 Q. And the replacement of cigarettes?
- 10 A. Product -- servicing products.
- 11 Q. Products. And then you have a separate  
12 contract with the Coast Guard and the direct  
13 sale and direct servicing of products of the  
14 United States Coast Guard?
- 15 A. That's correct.
- 16 Q. Any other activities that R. J. Reynolds  
17 Tobacco Company conducts in Galveston County,  
18 Texas?
- 19 A. Well, sometime during the period covered,  
20 there was some event sponsorships down there.
- 21 Q. Like what?
- 22 A. We have some of the documents to submit to  
23 you. There was some sampling done by an  
24 outside agency to consumers at some events.
- 25 Q. What do you mean by "sampling"?

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1 A. Sampling. Handing out samples of cigarettes.

2 Q. And what kind of cigarettes were handed out?

3 A. Winston, Salem, Camel.

4 Q. Has -- speaking of Camel, has Joe Camel been  
5 a successful advertising ploy for y'all?

6 A. Yes, it has.

7 Q. Have you found that Joe Camel is widely  
8 recognized?

9 A. Yes, he is.

10 Q. And has that helped your business here in the  
11 Houston and Galveston area?

12 A. It's helped some.

13 Q. Have Camel sales gone up since the use of Joe  
14 Camel?

15 A. Yes.

16 Q. Do you have any information as to what age  
17 group of people --

18 MS. VENSO: I object to going into  
19 the liability portion of this.

20 MR. TAYLOR: I'm not going into  
21 liability.

22 MS. VENSO: I don't see what this  
23 has to do with venue. And I'm going to  
24 instruct him not to answer.

25 MR. TAYLOR: Can I ask the question

1 first?

2 MS. VENSO: Uh-huh. Sure.

3 Q. (By Mr. Taylor) Are you provided any data by  
4 R. J. Reynolds Tobacco Company concerning the  
5 age groups that purchase cigarettes in  
6 Galveston County, Texas?

7 A. No.

8 MS. VENSO: I renew my objection  
9 and instruct him not to answer.

10 MR. TAYLOR: He already has.

11 MS. VENSO: I know.

12 Q. (By Mr. Taylor) What events were y'all --  
13 were you a sponsor of some events? Was  
14 R. J. Reynolds Tobacco Company sponsoring  
15 some events?

16 A. From the documents I've seen, of which I did  
17 not have any personal involvement, there was  
18 some cosponsorships of a fiesta-type concert  
19 connected with Mardi Gras.

20 Q. A fiesta-type concert. What do you mean by  
21 fiesta-type concert?

22 A. It was a Hispanic concert.

23 Q. And when was that -- in connection with  
24 Mardi Gras?

25 A. Yes.

1 Q. Who did you sponsor that in conjunction  
2 with?

3 A. Budweiser, Coca-Cola, and Coors.

4 Q. Were any other tobacco companies involved in  
5 it?

6 A. No.

7 Q. And during this -- was that primarily aimed  
8 at the Hispanic market?

9 A. Well, it was an event predominantly  
10 contact -- or attended by Hispanics.

11 Q. And you handed out free samples of cigarettes  
12 at that concert?

13 A. To my knowledge, we did; but I had no direct  
14 involvement in it.

15 Q. Have you done that more than once in  
16 Galveston County?

17 A. Yes, as far as I can remember, without  
18 looking at the documents.

19 Q. You do it every Mardi Gras, do you not?

20 A. We've done it for, I think, three years.

21 Q. And what about other times of the year,  
22 spring break, things of that nature? Have  
23 y'all engaged in any kind of promotional  
24 activities in Galveston County?

25 A. Not that I know of.

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1 Q. What about like Labor Day, 4th of July, other  
2 holidays?

3 A. A promotional activity we might have. But as  
4 far as sampling, none.

5 Q. And what type of promotional activities do  
6 you conduct -- does R. J. Reynolds Tobacco  
7 Company conduct in Galveston County, Texas,  
8 on the holidays or spring breaks or things of  
9 that nature?

10 A. Well, we place our different types of  
11 premiums; or we promote our brands in retail  
12 stores.

13 Q. Give discounts for coupons, things of that  
14 nature?

15 A. That's correct.

16 Q. Ever hand out T-shirts, things like that?

17 A. Don't hand them out. It's a purchase  
18 required.

19 Q. Oh, if you buy some of these cigarettes, you  
20 get a T-shirt?

21 A. That's correct. That's what we call a  
22 promotion.

23 Q. Okay. What kind of things do you give to  
24 people if they buy your cigarettes other than  
25 T-shirts?

1 A. T-shirts, mugs, sunglasses, beach towels,  
2 things like that.

3 Q. And that's all to entice people to buy your  
4 product, is it not?

5 A. Yes. Versus our competitors' brands.

6 Q. Or if somebody needs a beach towel, they can  
7 go buy some cigarettes and get a free beach  
8 towel, can't they?

9 A. That's their choice.

10 Q. And part of your job is to try to encourage  
11 people to use your product, isn't it?

12 A. Yes.

13 Q. That's part of the activity you conduct in  
14 Galveston County, is to encourage those  
15 citizens of Galveston County to use your  
16 products?

17 A. To buy our products versus our competitors'.

18 Q. Or to buy your products, period?

19 A. That's true.

20 Q. Part of your mission in Galveston County is  
21 to encourage people to buy your products,  
22 whether they use anybody's products or not?

23 A. That's correct.

24 Q. You want people to -- you want more and more  
25 and more people each and every year in

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1 Galveston County to use your products, do you  
2 not?

3 A. Not necessarily.

4 Q. Well, what activities do you conduct in  
5 Galveston County to discourage people from  
6 using your products?

7 A. To discourage people from using our  
8 products?

9 Q. Yes, sir.

10 A. We support the "It's the Law" program.

11 Q. What's "It's the Law" program?

12 A. Well, it's the law that persons under the age  
13 of 18 should not buy cigarettes.

14 Q. And how do you support the "It's the Law"  
15 program in Galveston County, Texas?

16 A. Through informing retailers of the laws.

17 Q. Do you give any money to advertising in  
18 Galveston County that it's the law, don't buy  
19 cigarettes if you're under 18?

20 A. Through the Tobacco Institute, we -- our  
21 company helps support and helps print the  
22 materials that are distributed to retailers  
23 to support "It's the Law" program.

24 Q. Do you know how much money is spent in  
25 Galveston County, Texas, to try to discourage

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1 people from smoking or to encourage people to  
2 follow the law versus how much you spend to  
3 try to get people to use your product?

4 A. I have no knowledge of that.

5 Q. Where could I find that information?

6 A. I wouldn't know. Unless it's Winston-Salem,  
7 North Carolina.

8 Q. Are you aware of any money that's contributed  
9 directly to Galveston County, Texas, to try  
10 to encourage people to abide by the law and  
11 not purchase cigarettes if they're under 18?

12 A. Not to my knowledge.

13 Q. Are you aware of any money that's spent in  
14 Galveston County, Texas, directly to  
15 retailers to encourage them not to sell to  
16 someone under 18?

17 A. No.

18 Q. You don't do that, do you?

19 A. No, we don't.

20 Q. Are you aware of any money that's spent in  
21 Galveston County -- I mean, all the money you  
22 spend on advertising in Galveston County,  
23 Texas, is to encourage people to use your  
24 products, isn't it?

25 A. I wouldn't say that. I would not say that,

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1 as we do have some initiatives against youths  
2 smoking; and we have initiatives to get  
3 people to support the law.

4 Q. And what are the those initiatives?

5 A. Through the Tobacco Institute.

6 Q. Yes, sir. But I'm talking about direct  
7 spending. R. J. Reynolds --

8 A. I wouldn't know the dollar amounts, but I  
9 have --

10 Q. Excuse me. Let me finish the question.

11 Do you know of any direct spending  
12 that R. J. Reynolds Tobacco Company or any  
13 direct advertising that R. J. Reynolds  
14 Tobacco Company makes in Galveston County,  
15 Texas, to encourage people under 18 years of  
16 age not to buy cigarettes?

17 MS. VENSO: Hang on, David.

18 I'm going to object to this as not  
19 having a thing to do with venue.

20 Q. (By Mr. Taylor) You can answer my question  
21 now.

22 A. I can? Okay. I don't know of any direct  
23 dollars paid. If that's the question.

24 Q. We also asked that R. J. Reynolds produce  
25 those persons who perform activities on its

1       behalf in Galveston County, Texas. And I  
2       understand they're not going to produce those  
3       people.

4               But I would ask you if you could  
5       identify for me those people who over the  
6       last two years have performed activities on  
7       behalf of R. J. Reynolds Tobacco Company in  
8       Galveston County, Texas.

9     A.    I've got Exhibit B here.

10    Q.    Okay.

11               MS. VENSO: We have prepared a list  
12       of who has been assigned there from  
13       January 1, 1990 to March 12th of 1993.

14               MR. TAYLOR: Will you mark this as  
15       the next exhibit.

16  
17               (An instrument was marked Spradley  
18       Exhibit No. 3 for identification.)

19  
20               (Discussion off the record.)

21  
22    Q.    (By Mr. Taylor) Mr. Spradley, I'm going to  
23       hand you what's been marked as Spradley  
24       Exhibit No. 3 and ask you if that is a  
25       complete and accurate list, to the best of

1 your knowledge, of all those R. J. -- are all  
2 those people either employees of or -- I  
3 guess -- are they all employees of R. J.  
4 Reynolds Tobacco Company?

5 A. Yes, or former employees.

6 Q. Are those all, to the best of your knowledge,  
7 either employees or former employees who at  
8 the time they were employees conducted  
9 activities on behalf of R. J. Reynolds  
10 Tobacco Company in Galveston County, Texas?

11 A. In the East Houston division.

12 Q. Well, would there be other people outside the  
13 East Houston division for R. J. Reynolds  
14 Tobacco Company that would from time to time  
15 be in Galveston County, Texas, conducting  
16 business activities?

17 A. Yes.

18 Q. Who else would be there?

19 A. Some folks that work out of the Beaumont  
20 division of Reynolds Tobacco Company.

21 Q. And what would they be doing there?

22 A. They would be in the 15 stores located on the  
23 Bolivar Peninsula.

24 Q. So not only does the Houston division of  
25 R. J. Reynolds Tobacco Company have

1 activities -- and I'm saying Houston division  
2 because that's --

3 A. Right.

4 Q. -- where your district sales division is,  
5 isn't it?

6 A. That's correct.

7 Q. You also have a district sales division in  
8 Beaumont?

9 A. That's correct.

10 Q. And some of the employees and sales  
11 representatives and those people have the  
12 same powers that the Houston division people  
13 have --

14 A. That's correct.

15 Q. -- also work in parts of Galveston County?

16 A. Right. Very small -- about 10 percent of the  
17 total retail calls or less.

18 Q. So in addition to those people we were  
19 talking about earlier out of Houston that  
20 spent two to three days a week or four days a  
21 week on the average --

22 A. No.

23 Q. -- the people from Beaumont also would be in  
24 addition to that?

25 A. Oh, yes. Okay. I misunderstood you.

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1 Q. And so the people from the Beaumont division  
2 would spend additional time in Galveston  
3 County?

4 A. Very small part.

5 Q. Well, 10 percent of their time?

6 A. Less than that.

7 Q. Five percent of their time?

8 A. I couldn't give you the exact number; but  
9 there's only 15 retail stores in that portion  
10 of Galveston County, most of which are very  
11 small locations, low volume stores. So we  
12 would maybe spend one -- maybe eight  
13 man-hours per month in that small section.

14 Q. Is the --

15 A. It's an insignificant amount of business.

16 Q. Does the Beaumont division answer to you?

17 A. No.

18 Q. Separate department?

19 A. That's correct.

20 Q. Anybody else for R. J. Reynolds Tobacco  
21 Company that would have any business in  
22 Galveston County, other than the people  
23 you've identified so far, or conduct  
24 activities in Galveston County?

25 A. Based on the records I have in my division

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1 office, I don't have any specific dates or  
2 names. From time to time there may be  
3 someone out of our region office or from our  
4 Winston-Salem office or our Dallas offices  
5 that may have come down and spent a day in  
6 the -- on what we call a day on the trade in  
7 the area.

8 Q. For example, do you go to Galveston County  
9 periodically?

10 A. Yes, I do.

11 Q. I didn't notice. Is your name on the list?

12 A. Yes, it is.

13 Q. People from your office spend -- on a regular  
14 basis go back and forth to Galveston County,  
15 do they not?

16 A. Yes.

17 Q. Now, you were also asked -- and do you have a  
18 copy of the deposition notice?

19 A. Do you need this back?

20 Q. The court reporter is going to need it  
21 because it's got an exhibit number on it.

22 A. Okay. Well, I didn't know if you need it now  
23 or --

24 Q. No, I don't need it right now.

25 We asked to you produce certain

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1 documents today, at the time of your  
2 deposition.

3 A. Uh-huh.

4 Q. And I would -- what I'd like to do is just go  
5 through these -- I don't want to sit here and  
6 read each and every category -- but just  
7 refer to it by numbers --

8 A. Okay.

9 Q. -- and ask you, one, did you produce any  
10 documents that fall within category numbered  
11 1 on Page 2 of the deposition notice.

12 MS. VENSO: Let me explain before  
13 we get started that what we are producing is  
14 nothing out of that Beaumont division, that  
15 we're only producing out of the East Houston  
16 division, and that we are producing more than  
17 what we had agreed with Micky Das last  
18 Thursday to present.

19 We brought more than samples.  
20 We've brought a greater portion of the  
21 documents than that. And we have a list of  
22 them here. So I just wanted to tell you that  
23 before we got started.

24 MR. TAYLOR: Okay.

25 MS. VENSO: I'd like to make our

1 letter to Micky last Thursday, after our  
2 conversation about this production, an  
3 exhibit to the deposition.

4 MS. GALLAGHER: Rob, do you want  
5 all these copied, too?

6 MR. TAYLOR: Yes, please. I just  
7 want the originals that we had marked and a  
8 copy of each.

9 MS. VENSO: Before we get started,  
10 Rob, I have a response that we have  
11 prepared. I realize that this response says  
12 "Pro Forma Subpoena Duces Tecum" and we were  
13 actually served with one and it's not pro  
14 forma. So that's wrong.

15 But instead of me making all these  
16 objections as you go along, let me just  
17 attach this to the deposition. And these are  
18 our objections.

19 MR. TAYLOR: Have we gotten a copy  
20 of that yet?

21 MS. VENSO: Here you go.

22 MR. DAVID: It's not signed.

23 MS. VENSO: Do you want me to sign  
24 it?

25 MR. TAYLOR: It's up to you.

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1 MS. VENSO: The only thing that  
2 we're not providing anything -- just to give  
3 you a sneak preview of where you're headed --  
4 is on the personnel records. We think we've  
5 given you enough information about who works  
6 there and what they do and where they live.  
7 And we're worried about their privacy. But  
8 everything else we're producing.

9 MR. TAYLOR: One of those is the  
10 original. I need the original.

11 MR. CRUSE: I don't have any idea  
12 where it is, Rob.

13 MR. TAYLOR: One of these is the  
14 original.

15 MR. CRUSE: You got me.

16 MS. VENSO: Rob, to make it easier  
17 on you, let me give you a copy of what --

18 MR. TAYLOR: Who's got the original  
19 of 1 and 2? Whoever got copies of these 1  
20 and 2, check and make sure you don't have the  
21 original sticker on there. You've got to  
22 check the sticker.

23 MR. COFER: Here's a -- no, that's  
24 not it.

25 THE WITNESS: There's 3. The

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1 original for 3 is all I have.

2 MS. VENSO: What's 1 and 2? The  
3 notice?

4 MR. TAYLOR: The notice and your  
5 request to request for admissions. Those  
6 aren't them right there, are they, Kathy?

7 MS. GALLAGHER: Huh-uh. These are  
8 copies.

9 MR. CRUSE: Are those the  
10 originals?

11 MR. TAYLOR: Yeah.

12 MR. CRUSE: Trade with me, then.

13 MR. TAYLOR: That's 1. There's 2.  
14 Here's 1.

15  
16 (Discussion off the record.)

17  
18 MR. TAYLOR: Okay. Now we're  
19 straight.

20 MS. VENSO: Rob, we also filed an  
21 amended response yesterday.

22 MR. TAYLOR: I've got that.

23 MS. VENSO: Do you have that?

24 MR. TAYLOR: It's marked -- or it's  
25 going to be marked. I just haven't marked it

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1 yet.

2 MS. VENSO: Okay.

3 And to make it easier, here is a  
4 list of what we've brought.

5 MR. TAYLOR: Okay. Just a second.

6 If you would, mark that as the next  
7 exhibit number.

8  
9 (Instruments were marked Spradley's  
10 Exhibit Nos. 4 and 5 for  
11 identification.)

12  
13 MR. TAYLOR: Exhibit No. 1 is "R. J.  
14 Reynolds Tobacco Company's Response to  
15 Plaintiffs' Request for Admissions." 2 is  
16 the notice of this deposition. 3 is the list  
17 of people that we went over awhile ago. 4 is  
18 their supplemental responses to plaintiffs'  
19 request for admissions. 5 is the list of  
20 documents.

21 MS. GALLAGHER: This one? This?

22 MR. TAYLOR: Yeah, this.

23 How many pages of documents are we  
24 talking about?

25 MR. DAVID: They're all right

1           there.

2                   MS. VENSO: They're right here.

3                   MR. SCARBORO: How about this  
4           stuff, is that an exhibit?

5                   MR. TAYLOR: They haven't been  
6           marked yet. They said they want to make it  
7           an exhibit, but we just haven't marked it  
8           yet.

9                   MS. VENSO: Yeah, I do want our  
10          response marked. And I want my letter to  
11          Micky marked.

12                   MS. GALLAGHER: What is that? 6  
13          and 7?

14                   MS. VENSO: Because that response  
15          has our objections on it, and that way I  
16          won't have to make them.

17                   MR. TAYLOR: What does the letter  
18          say?

19                   MS. VENSO: The letter was about us  
20          talking to you on Thursday about what we  
21          would produce. We're producing more than  
22          that, given the letter we got from you on  
23          Friday.

24  
25                   (Instruments were marked Spradley's

1 Exhibit Nos. 6 and 7 for  
2 identification.)

3  
4 MR. TAYLOR: Okay. Whatever.  
5 Are those all copies of your  
6 records as opposed to original records?

7 MS. VENSO: No. They're  
8 originals. We can make copies of anything  
9 you want. But I don't think you're going to  
10 want most of it. Or you may want one of  
11 something.

12 Q. (By Mr. Taylor) Okay. We need to go  
13 through -- if you would, Mr. Spradley, look  
14 at Exhibit No. 5. You've got a copy right  
15 there, I think. It's the --

16 A. Is this Exhibit 5 here?

17 Q. Yeah. It's the boxed numbers with all the  
18 documents.

19 A. Okay.

20 Q. I would -- if you would for me, tell me where  
21 I would find those documents requested in  
22 Paragraph 1 on Page 2 of the duces tecum.

23 A. That would be Exhibit 3.

24 Q. Exhibit 3?

25 A. Exhibit 3.

1 MS. VENSO: That's our list of  
2 employees.

3 MR. DAVID: The list that's  
4 attached to the response as Exhibit B.

5 Q. (By Mr. Taylor) And that's what's being --  
6 Exhibit 3 is what's being supplied -- which  
7 is a summary, I take it, of other records.  
8 And it's being applied -- I'm sorry -- being  
9 supplied in response to Request No. 1,  
10 correct?

11 A. That's correct.

12 Q. Request No. 2. Where do I find that?

13 A. Sample logs is in Box 8B.

14 MR. TAYLOR: Let me have that.  
15 That's somebody else's. I don't want to mark  
16 on that.

17 MR. CRUSE: What?

18 MR. TAYLOR: This is either yours,  
19 Sam, or somebody's. You handed it to me, and  
20 I don't want to mark on it.

21 Q. (By Mr. Taylor) So No. 2 would be found in  
22 8B?

23 A. That's correct.

24 Q. Which is -- okay. What about No. 3?

25 A. No. 3 would be in Boxes 3 -- Box 2 and Box 4,

1 Box 6, Box 7.

2 MR. DAVID: 5, too.

3 MS. VENSO: And 5.

4 A. Box 5, also.

5 Q. (By Mr. Taylor) Would all of Box 5 -- all of  
6 Box 2, all of Box 4, all of Box 5, all of Box  
7 6, and all of Box 7 be in response to No. 3?

8 A. They would be in response to 3 and 5.

9 Q. What about No. 4? Where do I find that?

10 A. No. 4 we would refer to --

11 MR. DAVID: We haven't located any.

12 MS. VENSO: We don't know of any  
13 document like that.

14 A. We don't have any.

15 Q. (By Mr. Taylor) There are none?

16 A. Huh-uh.

17 Q. No. 5? I would also look in 2, 4, 5, 6, and  
18 7?

19 A. Yes, sir.

20 Q. What about No. 6?

21 A. No. 6 would be in Box 8.

22 Q. Okay. No. 7?

23 A. Box 1.

24 Q. No. 8?

25 A. Box 3.

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1 Q. 9?

2 A. Nine would refer -- I don't think we have any  
3 specific documents regarding those policy  
4 statements, guidelines, manuals,  
5 instructions, or other similar documents.

6 MS. VENSO: Our problem is we  
7 really didn't know what you wanted in that.  
8 We don't give anything to prospective or  
9 actual customers like you've said.

10 Now, we obviously have --

11 MR. TAYLOR: No. I think what  
12 they're asking is the reverse of it. Any  
13 information you give to your sales  
14 representatives or your people out there  
15 concerning the policies and procedures,  
16 guidelines, so on and so forth.

17 A. That's not how we interpret it.

18 Q. (By Mr. Taylor) Okay.

19 MS. VENSO: What is it you want  
20 there?

21 MR. TAYLOR: I guess I probably  
22 want both -- you're telling me you don't give  
23 anything out to your prospective customers,  
24 correct?

25 MS. VENSO: Right. We don't have

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1 policy guidelines that we give to them. We  
2 just talk to them.

3 Q. (By Mr. Taylor) Manuals, instructions --

4 A. Manuals, instructions or other similar  
5 documents.

6 Q. You give them nothing in writing other than  
7 the agreement, I take it?

8 MS. VENSO: The agreement only.

9 A. Now, that would be covered under the  
10 agreements and in potentially No. 10.

11 Q. (By Mr. Taylor) Do we have copies of any of  
12 the agreements? Yes. They're in Box 3,  
13 right?

14 A. That's correct.

15 Q. I guess the other side of that question is:  
16 Do you provide anything in writing to your  
17 own employees, your people working in  
18 Galveston County, concerning -- where are we  
19 at -- policy statements, guidelines, things  
20 of that nature, in writing?

21 A. That would be something that we've  
22 discussed. We have some of those, but they  
23 are not given to the retailers. We  
24 interpreted things, and we do have things  
25 that we give to our representatives as

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1 guidelines and policies.

2 Q. And how they should conduct themselves in  
3 Galveston County?

4 A. That's correct.

5 Q. How to do deal with --

6 MS. VENSO: Anywhere.

7 Q. (By Mr. Taylor) How to deal with customers,  
8 correct?

9 A. That's correct.

10 Q. And those apply when those people are working  
11 in Galveston County?

12 A. That's correct.

13 Q. How to put forward the best foot for  
14 R. J. Reynolds Tobacco Company is part of --

15 A. That's exactly right.

16 Q. You did not produce those because you didn't  
17 understand the request?

18 MS. VENSO: Do you want those?

19 MR. TAYLOR: I'm sure we do at some  
20 point.

21 MS. VENSO: Okay.

22 MR. TAYLOR: Norma, I'm going to  
23 suggest this, is that rather -- I don't want  
24 to keep Mr. Spradley here all day today going  
25 through these documents. I really don't want

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1 to do that. I think we get this --

2 MS. VENSO: Well, why not -- let me  
3 suggest this.

4 MR. TAYLOR: If you can take the  
5 documents and we can put them in some place  
6 central and get everybody's documents  
7 together so we can come over here at one time  
8 and go through them, with the agreement that  
9 they're whoever's documents they are and at  
10 least for purposes of the venue hearing can  
11 be used for that purpose without going  
12 through and sending each one of them up.  
13 And, finally, it's going to make it a lot  
14 simpler than making each witness go through  
15 and pull me out representatives, which I  
16 don't really want to do. Or we can put them  
17 all in one spot.

18 Now, if everybody is going to bring  
19 in originals, I can understand that you don't  
20 want your originals turned loose. You're  
21 going to want them in somebody's possession.  
22 So maybe we can at least get them in one  
23 city.

24 THE WITNESS: Well, certain amount  
25 of it --

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1 MS. VENSO: I think if you look at  
2 this, most of this stuff -- you know, these  
3 telephone logs and a lot of this stuff I  
4 don't really think you want.

5 MR. TAYLOR: I think you're  
6 probably right.

7 MS. VENSO: And if you'd have him  
8 give you kind of a tour through it, you might  
9 want one or two to pull out and attach to the  
10 deposition; and we'd be through with this.

11 MR. TAYLOR: We can do it that  
12 way.

13 MS. VENSO: I think that would be  
14 pretty simple. I think he can get the kind  
15 of contracts that you're looking for and the  
16 kind of sales receipts that you're looking  
17 for --

18 MR. TAYLOR: Let's do that.

19 MS. VENSO: -- and then be done  
20 with this.

21 Q. (By Mr. Taylor) But, 9, you do have written  
22 policies and things you give to your  
23 employees?

24 A. Right. But they are not given to --

25 Q. I understand.

- 1 A. -- the retailers. And that was where we  
2 interpreted it. That's the way it's  
3 written.
- 4 Q. I'm not quarreling with you.
- 5 A. Okay.
- 6 Q. The only question I have is: Could y'all get  
7 those to Norma --
- 8 A. Uh-huh. That's fine.
- 9 Q. -- copies to Norma so that --
- 10 A. We can get those copies to Norma.
- 11 MS. VENSO: Yes, we will.
- 12 MR. TAYLOR: And then we can look  
13 at them.
- 14 Q. (By Mr. Taylor) Okay. What about No. 10?  
15 That's Box 8?
- 16 A. Box 8. That's correct.
- 17 Q. 11 is -- you don't have anything in 11?
- 18 MS. VENSO: Right.
- 19 A. We don't have any district maps available.
- 20 Q. (By Mr. Taylor) Y'all don't have specific  
21 geographical areas that each --
- 22 A. We have specific geographical areas, but  
23 they're not on any county map that we would  
24 have in the office.
- 25 Q. Do you have any kind of map?

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1 A. No. I mean, I have a map on the wall, one of  
2 those big Key maps, that shows a minor  
3 portion of Galveston County.

4 Q. I guess this is what -- it's not limited to  
5 maps. It's any and all documents that would  
6 include territory maps or district  
7 assignments.

8 I mean, do you have anything in  
9 writing that assigns specific districts to  
10 certain people?

11 A. We provided that in response to a list of  
12 stores.

13 Q. I understand. But I guess the question  
14 becomes -- is: Is a particular salesperson  
15 assigned a specific geographic area, or can  
16 they just --

17 A. That's correct.

18 Q. Okay.

19 A. They are specifically assigned a geographic  
20 area. But I do not have it in writing, or I  
21 don't have it in a map form. We have  
22 produced a list of 384 stores, or something,  
23 that we have in the records.

24 Q. Yes, sir. I guess the question is this,  
25 though --

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1 THE WITNESS: Do you know where  
2 that is?

3 MS. VENSO: All of these people on  
4 Exhibit 3 are attached to Galveston County.

5 Q. (By Mr. Taylor) But I guess the question  
6 goes beyond that. Are they -- which people  
7 are attached solely to Galveston County?

8 A. Solely to Galveston County? Bob Tichelaar,  
9 Betty Hall, Vince Collelli. These are  
10 part-time employees over there. And those  
11 would be the only ones attached solely.

12 Q. Okay. All the rest of them perform a  
13 portion --

14 A. -- of their time.

15 Q. Which ones perform more than 50 percent of  
16 their time in Galveston County?

17 A. Bob Tichelaar, Harvey Cotten.

18 Q. No. The full-time employees.

19 A. Full-time. Bob Tichelaar. Excuse me. I  
20 listed him first. Bob Tichelaar is a  
21 full-time. It's a hundred percent of his  
22 time, Galveston County. Harvey Cotten over  
23 50 percent. Clim Crutcher, over 50 percent.  
24 Those are the three that are over  
25 50 percent.

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- 1 Q. The rest -- and have you identified on your  
2 list -- I don't have it in front of me. Have  
3 you identified on your list those people that  
4 are part-time versus those that are  
5 full-time?
- 6 A. Yes.
- 7 Q. The other full-time people spend something  
8 less than 50 percent of their time?
- 9 A. Yes.
- 10 Q. Do you have anything in writing that defines  
11 the geographic area for a particular  
12 individual within Galveston County?
- 13 A. I would only have a list of calls by  
14 territory number -- a list of stores, retail  
15 stores, by territory number.
- 16 Q. What's a territory number?
- 17 A. Well, let's say an assignment, a list --
- 18 Q. Is that geographical?
- 19 A. Yes, it's geographical.
- 20 Q. Is that done by map, or is that done just by  
21 written description?
- 22 A. It's done by written description and by  
23 address, by street.
- 24 Q. Tell me how it's done by written  
25 description. Is it between such and such

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- 1 streets on the north --
- 2 A. No.
- 3 Q. -- and such and such streets on the south?
- 4 A. No. It's a list of stores, retail stores;
- 5 and we know that -- I know that Galveston
- 6 Island is broke down primarily with Broadway
- 7 as being the boundary. And one rep calls on
- 8 most of the stores on the south side of
- 9 Broadway, and one rep calls on most of the
- 10 stores on the north side of Broadway.
- 11 Q. Is that -- I guess what we're trying to find
- 12 out: Is that in writing anywhere?
- 13 A. No. Other than a list of stores that you
- 14 could look at the list of stores and
- 15 determine on a map where they're at.
- 16 Q. Does everything south of Broadway have one
- 17 territory number?
- 18 A. Yes.
- 19 Q. What's that territory number?
- 20 A. 4, I believe, now.
- 21 Q. And everything north of Broadway on the
- 22 island has another territory number?
- 23 A. For the most part, Territory 11. I said not
- 24 everything. But for the most part.
- 25 Q. Is there someplace that has the territories

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1 by numbers as to what their geographic areas  
2 are comprised by each territory?

3 A. No, other than a list of the stores.

4 Q. Then we would just literally have to take  
5 each store and find out where it was --

6 A. And pinpoint it on the map. That's correct.

7 Q. And we could get some general idea of the  
8 geographic territory?

9 A. Right.

10 Q. But Galveston Island is broken into basically  
11 two categories?

12 A. Two territories.

13 Q. What about the rest of Galveston County, how  
14 many territories is it in?

15 A. Three.

16 Q. So there are five territories within  
17 Galveston County?

18 A. That have -- all or a portion of the stores  
19 are from Galveston County.

20 Q. No. 12. Did you have any information  
21 evidencing the advertising?

22 A. I don't have any documents available to me  
23 that has to do with any videos, photography,  
24 or any advertising shown in any media. It's  
25 specifically calls for media. And I do not

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1 control media buys or media advertising out  
2 of our office.

3 Q. Who does?

4 A. The media department in Winston-Salem,  
5 North Carolina.

6 Q. What about -- do you do any advertising in  
7 the Galveston newspaper?

8 A. Not to my knowledge. We may. I don't take  
9 the paper.

10 Q. But that would be done out of Winston-Salem.

11 A. Out of our media department.

12 Q. I take it the only promotion that you  
13 provided any information on is the Hispanic  
14 program event summary?

15 A. Yes. There may be another document with  
16 that. I'd have to look at them.

17 Q. But, to your knowledge, there have been no  
18 other -- what did you call those -- what did  
19 you call that?

20 A. We call it an event.

21 Q. Promotional event?

22 A. Promotional event, I guess you could say.

23 Q. There have been no other promotional events  
24 in Galveston County, to your knowledge, other  
25 than the three years of the fiesta Hispanic

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1 promotional event in association with Mardi  
2 Gras?

3 A. We have that in our documentation. I'd have  
4 to pull it to read specifically. We  
5 responded that the Winston hydroplane raced  
6 in a portion of Galveston County in either  
7 1988 or '89 in connection with the hydroplane  
8 races there on the lake. A portion of the  
9 lake is in Galveston County.

10 There may be one other event. But  
11 I can't pull it off the top of my head. I'd  
12 have to look.

13 MS. VENSO: We answered Fiestas  
14 Patrias and Cinco de Mayo, as well.

15 Q. (By Mr. Taylor) Those are the only two  
16 events that you have records of --

17 A. Right.

18 Q. -- that R. J. Reynolds Tobacco Company  
19 sponsored --

20 A. That's correct.

21 Q. -- in Galveston County?

22 A. And the reason I know about those documents  
23 is I've seen them. I was not personally  
24 involved in any of them. That's why I  
25 couldn't give you more detail. If I was

1 involved in them, I could give you more  
2 detail.

3 Q. Were you involved at all in the decision to  
4 sponsor those two events?

5 A. No, I wasn't.

6 Q. Who was?

7 A. Someone out of our marketing department. I  
8 don't know that person. There was a local  
9 contact.

10 Q. Is that Winston-Salem?

11 A. Yes.

12 Q. So Winston-Salem made the decision as to what  
13 type of events to sponsor in Galveston  
14 County?

15 A. Yes, through a marketing supplier.

16 Q. And they actually, to your knowledge, make  
17 certain market tests to determine which  
18 events they want to sponsor?

19 A. Not to my knowledge.

20 Q. What about No. 13? Is that Box 3?

21 A. 13 is Box 3. Those are the --

22 Q. -- merchandising agreements?

23 A. -- merchandising agreements.

24 Q. Okay. No. 14. I saw that you have none.

25 A. None.

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1 Q. You don't have any contracts with any --

2 A. I don't have access to any contracts  
3 providing for services to be performed by  
4 others for the defendant.

5 Q. In other words, does anybody, to your  
6 knowledge, in Galveston County, Texas,  
7 provide services to R. J. Reynolds Tobacco  
8 Company?

9 A. Not to my knowledge. Not to my knowledge.

10 Q. Well, your part-time employees, would you  
11 have contracts with them?

12 A. No.

13 Q. Other than oral?

14 A. They're an employee, but there's no  
15 contract. It's an oral contract.

16 Q. What about billboards? You purchase  
17 billboards space in Galveston County, do you  
18 not?

19 A. That's done by the media department.

20 Q. Well, okay.

21 A. But I wouldn't have -- access to provide that  
22 information and -- information we provided  
23 was from the East Houston division records.

24 Q. Did you see anywhere in this deposition  
25 notice that it limited it to a request for

1 information only from the East Houston  
2 division?

3 A. No.

4 MS. VENSO: No. But that's all we  
5 did.

6 MR. TAYLOR: I understand.

7 MS. VENSO: And we can do more if  
8 you want more, but that's all we did.

9 MR. TAYLOR: I'm going to want to  
10 know about advertising in Galveston and what  
11 contracts they have for advertising.

12 Q. (By Mr. Taylor) Would that be handled out of  
13 Winston-Salem, also?

14 A. Yes, sir.

15 Q. So that if they're advertising contracts in  
16 Galveston County or for advertising to be  
17 performed in Galveston County, that would  
18 have been done by your Winston-Salem  
19 headquarters?

20 A. That's correct.

21 Q. I take it that's where R. J. Reynolds Tobacco  
22 Company's headquarters is, is Winston-Salem,  
23 North Carolina?

24 A. That's correct.

25 MS. VENSO: And that's what you

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1 want, is advertising contracts?

2 MR. TAYLOR: And the contracts they  
3 had for services there. Advertising came to  
4 mind because I've seen billboards in  
5 Galveston County, probably newspaper ads and  
6 other type of advertising in Galveston  
7 County. I've seen promotional things in  
8 Galveston County. If that is all controlled  
9 out of Winston-Salem, then that's what we  
10 want.

11 MS. VENSO: Okay.

12 MR. TAYLOR: I don't know if other  
13 type services, if R. J. -- I mean, for  
14 example, if they get contracts with a service  
15 station down there -- I don't know that they  
16 do -- or some kind of maintenance contracts  
17 or anything of that nature in Galveston  
18 County, we want to know who those are.

19 Q. (By Mr. Taylor) For example, who services  
20 your trucks in Galveston County?

21 A. Who services our trucks?

22 Q. Yes, sir.

23 A. The trucks or the vehicles are leased  
24 vehicles, and they may be serviced by  
25 Firestone or Goodyear.

1 Q. In Galveston?

2 A. In Galveston from time to time.

3 Q. And you have contracts with Firestone and  
4 Goodyear?

5 A. We don't. Our lessee or the company we lease  
6 our vehicles for does.

7 Q. And who do you lease your vehicles from?

8 A. PH&H. Peterson, Howell & Heather out of  
9 Maryland.

10 Q. Out of Maryland?

11 A. Uh-huh.

12 MS. VENSO: What years are you  
13 interested in, Rob, on these contracts?

14 MR. TAYLOR: Last two --  
15 well, '91, '92.

16 MS. VENSO: '90, '91, and '92?

17 MR. TAYLOR: Just '91 and '92.

18 MS. VENSO: Just '91 and '92?

19 MR. TAYLOR: Yeah. And, I mean, I  
20 don't want all your contracts, obviously. I  
21 really don't.

22 MS. VENSO: Just get you some  
23 samples of each kind?

24 MR. TAYLOR: Yes.

25 Q. (By Mr. Taylor) No. 15 asks for personnel

1 records. I assume y'all have objections to  
2 producing those, and have not?

3 MS. VENSO: Right. That's the --

4 MR. TAYLOR: That's fine.

5 MS. VENSO: Right.

6 Q. (By Mr. Taylor) 16, it says "...reflecting  
7 any ownership or possessory...in any real or  
8 personal property." I take it that would  
9 be -- the merchandise agreements would fit in  
10 that category?

11 A. No.

12 Q. Well, you told me earlier that when you enter  
13 these merchandising agreements, it's your  
14 intent that you purchase or lease so much  
15 space from a particular store.

16 A. That's a merchandising agreement. It's a  
17 contract for merchandising space.

18 Q. But doesn't it affect possession of certain  
19 real property or personal property?

20 A. I wouldn't think so.

21 Q. Isn't it your intent that R. J. Reynolds have  
22 the right to possess? That's the reason you  
23 pay the people so much dollars each month,  
24 isn't it?

25 A. The right to possess? I don't understand.

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- 1 Q. The right to possess so much space in that  
2 person's store for your display.
- 3 A. We are paying for the right to have exposure  
4 of our brands to the consumer.
- 5 Q. But you told me earlier that you felt like  
6 you were leasing or renting space from them  
7 to put your products in. And it specifies  
8 they will provide you so much area, doesn't  
9 it?
- 10 A. Well, I disagree with the renting --
- 11 Q. Why don't you do this.
- 12 A. Okay.
- 13 Q. Why don't you go get me two or three of them  
14 out of that box over there.
- 15 A. Okay.
- 16 MS. VENSO: I think that will clear  
17 it up.
- 18 MR. TAYLOR: Watch out. Your tie.
- 19 Q. (By Mr. Taylor) If you have more than one  
20 type, Mr. Spradley, I would appreciate you  
21 getting two or three of each type.
- 22 A. Do you want the actual contract, signed  
23 contract; or would you like samples?
- 24 Q. I'd like the actual signed contracts.
- 25 A. Okay. I didn't box these up, so I'm not

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1 really sure where they're at.

2 Q. (By Mr. Taylor) Okay.

3 A. Bear with me.

4 Q. Okay. What is the whole thing you're looking  
5 at there?

6 A. This is A -- from A through Z.

7 Q. A through Z what?

8 A. The names of the -- by store name.

9 Q. The --

10 A. Customers in Galveston County. These are  
11 contracts that we have with customers in  
12 Galveston County.

13 Q. Let me just see the whole packet of A through  
14 Z.

15 MR. TAYLOR: It would be easier if  
16 we do it this way.

17 THE COURT REPORTER: Can we go off  
18 the record for a minute so I can change my  
19 paper?

20 MR. TAYLOR: Sure. She wants to  
21 change her paper. We can go off the record  
22 in just a second. Let me read some of  
23 these.

24 THE VIDEOGRAPHER: 10:50 a.m.  
25 We're off the record.

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1

2

(A recess was taken.)

3

4

(The following statements were not  
on videotape.)

5

6

7

MR. TAYLOR: These are the

8

documents we want whoever is going to copy

9

them to copy them. They're 50832-2423 -- is

10

the 50823 all the same?

11

MR. DAVID: I'm not sure what --

12

THE WITNESS: I believe so.

13

MS. VENSO: Yes, it is. It's 1

14

through 2359. So the 50832 is all the same.

15

MR. TAYLOR: Okay. These are all

16

going to have the first prefix of 50832.

17

I'll just read the last four numbers. 2423

18

through 2448; 2450; 2468 through 2480 -- I'm

19

sorry -- 2481. You've got to watch and catch

20

the fronts and backs of these also, whoever

21

is copying them.

22

2484; 2885; 2487 through 2503; 2513

23

through 2515. We can go back on now, if

24

you're ready.

25

THE VIDEOGRAPHER: It's 11:06 a.m.

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1 We're on the record.

2 Q. (By Mr. Taylor) Mr. Spradley, I'm going to  
3 hand you a file folder which, I think,  
4 includes your customers A and  
5 B -- alphabetically A and B --

6 A. Okay.

7 Q. -- who have the different agreements with  
8 R. J. Reynolds Tobacco Company. And while we  
9 were off the video but on the other record, I  
10 identified certain Bates stamped numbers or  
11 certain numbers that had been placed on the  
12 documents that will be copied either by  
13 R. J. Reynolds Tobacco Company or by the  
14 court reporter and attached to your  
15 deposition. And I have turned those ones  
16 that I named where the top sticks out of the  
17 folder, sideways in the folder, if you  
18 would.

19 A. Okay.

20 Q. And what I'm going to ask you to do is just  
21 go through this folder and look at the ones  
22 that are turned sideways with the top  
23 sticking out of the folder and tell me if  
24 there are other -- one, that these are all  
25 contracts that R. J. Reynolds Tobacco Company

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1 has entered into with people in Galveston  
2 County or businesses in Galveston County;  
3 and, two, if there are other types of  
4 contracts that are not included here that  
5 R. J. Reynolds has entered into with people  
6 or businesses in Galveston County.

7 A. Do you need me to just give the number  
8 or --

9 Q. No, sir. I just need you to tell me if those  
10 are -- if any of them are not contracts  
11 between R. J. Reynolds Tobacco Company,  
12 either businesses or people in Galveston  
13 County, Texas.

14 A. Okay. The first page is not a contract.

15 Q. Okay.

16 A. It's a screen off our PC that details all the  
17 contracts that should be attached.

18 Q. And that's the page number that's got the  
19 last four numbers of 24 --

20 A. 2423 is not a contract.

21 Q. Okay. But it's stapled to a bunch of  
22 contracts?

23 A. Right. 2424 is a contract.

24 Q. Just tell me which ones are not. It's going  
25 to be easier to do it that way, I promise

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1           you.

2    A.     Some of these are duplicate copies.

3    Q.     I understand.

4    A.     You don't care to know the duplicate copying  
5           numbers?

6    Q.     Well, the reason I gave all those numbers to  
7           be copied is because y'all had stapled them  
8           together and I didn't want to take your  
9           staple apart.

10   A.     That's fine.

11   Q.     That's the reason they're that way.

12   A.     Let's start again. You want the numbers of  
13           those that are contracts?

14   Q.     That are not contracts.

15   A.     That are not contracts?

16   Q.     Yes, sir.

17   A.     No. 2448, that is a type of agreement. It's  
18           not necessarily a contract.

19   Q.     But it is an agreement?

20   A.     Yes, it is.

21                         MS. VENSO: That's 2468.

22                         THE WITNESS: 2468.

23   Q.     (By Mr. Taylor) It's an agreement between  
24           R. J. Reynolds Tobacco Company and a citizen  
25           of Galveston County, Texas?

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1 A. A retailer. We wouldn't know if it's a  
2 citizen.

3 Q. Either a business or person in Galveston  
4 County, Texas?

5 A. That's correct.

6 Q. Okay.

7 A. They may live elsewhere.

8 No. 2528 is listed as an agreement,  
9 not a contract. It's basically an outdated  
10 agreement. But we've kept it in the file  
11 because the agreement may still be under a  
12 gentleman's contract, gentleman's agreement,  
13 to continue to pay for. The offered expired  
14 in 1986.

15 Q. In addition to -- well, okay.

16 Are there any other forms of  
17 contracts or agreements that R. J. Reynolds  
18 Tobacco Company uses with either people or  
19 businesses in Galveston County, Texas, other  
20 than we have in that file folder that has  
21 customers A through B in it?

22 A. There might be, but I would need to really  
23 basically take a list of these and compare it  
24 to some of the other samples that I have. I  
25 mean, we've looked at about 10 or 15

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1 different types here. And I can't remember  
2 off the top of my head, after flipping  
3 through answering your first question, as to  
4 whether it covers that.

5 Q. I've got a way to handle that.

6 A. It's a representative sample.

7 Q. You've also indicated you have brought  
8 samples of other type contracts used in  
9 Galveston County?

10 A. Right. And it's much easier to provide you a  
11 blank contract than it is to filter through  
12 these.

13 Q. Let's put this on videotape. That's another  
14 stack. And that's C through Z of the  
15 contracts you have in Galveston County,  
16 customers C through Z?

17 A. That's correct.

18 Q. In addition to A and B?

19 A. That's correct.

20 MR. TAYLOR: If you would, can we  
21 have a copy of the blank contracts and mark  
22 that whole stack as an exhibit?

23 MS. VENSO: You bet.

24 MR. TAYLOR: Why don't we do that  
25 and mark that as Exhibit No. 8.

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1 THE COURT REPORTER: Yes.

2

3 (Exhibit No. 8 will be marked by  
4 counsel and attached to the  
5 deposition at a later date.)

6

7 Q. (By Mr. Taylor) So Exhibit 8 will --

8 MS. VENSO: You don't think we  
9 brought those?

10 MR. DAVID: I don't know if we did  
11 or not. Blanks, I don't know.

12 MS. VENSO: Didn't we have those?

13 THE WITNESS: We had them last  
14 night. I don't know if we had them this  
15 morning.

16 MS. VENSO: We had them this  
17 morning.

18 Q. (By Mr. Taylor) While they're looking for  
19 that, Mr. Spradley, I noticed in there that  
20 those contracts talked about the  
21 R. J. Reynolds in return for -- and one of  
22 them is almost \$700 a quarter -- agreed to  
23 get so much shelf space?

24 A. That's correct.

25 Q. Shelf space is physical, is it not?

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FLA

- 1 A. Yes.
- 2 Q. You can go out and touch it?
- 3 A. Yes.
- 4 Q. Feel it; it's tangible?
- 5 A. That's correct.
- 6 Q. And the reason you want shelf space is to put
- 7 your products on it, correct?
- 8 A. That's correct.
- 9 Q. You don't want them back in the back of the
- 10 store back in the warehouse, do you?
- 11 A. That's correct.
- 12 Q. You pay these -- 600 or \$700 a month -- a
- 13 quarter, you were paying one of those stores
- 14 to have so much shelf space to display your
- 15 products?
- 16 A. That's correct.
- 17 Q. Your agreement places certain restrictions as
- 18 to how that will be displayed, does it not?
- 19 A. Requirements, restrictions.
- 20 Q. And if that store owner does not display your
- 21 products in accordance with that agreement,
- 22 you're not going to pay him, are you?
- 23 A. That's correct.
- 24 Q. So to that extent you are renting or leasing
- 25 a shelf space?

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1 A. Well, I would disagree it's renting or  
2 leasing.

3 Q. Well, what do you --

4 A. It's providing payment for consideration on  
5 exposure. We're basically buying the  
6 exposure.

7 Q. It specifies shelf space, doesn't it?

8 A. Yes. But the No. 1 ingredient is having the  
9 advertising and product exposure.

10 Q. Well, you don't want them putting it on the  
11 floor back in the corner, do you?

12 A. I wouldn't. That wouldn't be a good exposure  
13 to the consumer, would it?

14 Q. You're not going to pay somebody 200 -- 150  
15 to \$200 a month to go out and place your  
16 cigarettes, the cigarettes they buy from some  
17 third person, to place those cigarettes in  
18 the floor behind some other display, are  
19 you?

20 A. I don't think that would be a good business  
21 decision.

22 Q. The point is: If you're going to pay  
23 somebody 150 to \$200 a month, they're going  
24 to have to display those cigarettes on a  
25 shelf, are they not?

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1 A. That's correct.

2 Q. The more prominent, the better for you.  
3 Correct?

4 A. That's correct.

5 Q. If they don't display it on a shelf, then  
6 you're going to not pay them their \$200 a  
7 month?

8 A. That's correct.

9 Q. To that extent, you are renting or leasing  
10 the shelf, are you not?

11 A. I still say they're merchandising  
12 agreements. They are --

13 Q. Well, I don't care what --

14 A. They are designed to provide us exposure.  
15 They're designed to provide us a vehicle to  
16 display our brands, and it's not unlike any  
17 other merchandising agreements that you would  
18 find throughout the store: milk companies,  
19 other cigarette companies, bread companies.  
20 And if --

21 Q. I'm not saying it's different from any other  
22 agreements.

23 A. Right. But I don't consider it rent or  
24 lease. It's never spelled out in the  
25 contract that it's rent or lease. I don't

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1 consider it that.

2 Q. Well, but it says you're going to get so much  
3 space, doesn't it?

4 A. Space?

5 Q. What does rent do? Rent entitles you to  
6 occupy a certain amount of space, doesn't  
7 it?

8 A. That's correct. But the agreement is with  
9 the --

10 MS. VENSO: It gives you a certain  
11 space, not just a certain amount.

12 A. If we're talking -- we are paying for  
13 merchandising consideration in a retail  
14 store. We are not renting that -- we're not  
15 renting that space from that store.

16 Q. (By Mr. Taylor) It's not responsive to my  
17 question.

18 A. Okay.

19 Q. But let me ask you a question: Do you rent  
20 any warehouse space?

21 A. Do we rent any warehouse space? Our office.

22 Q. Any other warehouse space where you store  
23 anything?

24 A. We have a mini storage warehouse.

25 Q. And you rent that space, do you not?

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- 1 A. That's correct.
- 2 Q. Now, if you're going to take some furniture
- 3 into a warehouse and you're going to rent
- 4 some space, right --
- 5 A. Yes.
- 6 Q. -- you don't care where in that warehouse
- 7 they put it, do you?
- 8 A. No.
- 9 Q. As long as it's inside the warehouse?
- 10 A. That's correct.
- 11 Q. And you are renting that space?
- 12 A. I'm renting --
- 13 Q. -- the space.
- 14 A. I'm renting the floor and the walls and the
- 15 space in which to --
- 16 Q. You're not. You're renting so much of the
- 17 space from that warehouse, are you not?
- 18 A. That's correct.
- 19 Q. And you don't care where they put it as long
- 20 as they don't damage it, correct?
- 21 A. I don't care where they put what if they
- 22 don't damage it?
- 23 Q. The furniture that you put in the warehouse?
- 24 A. No.
- 25 Q. You don't care where they put it as long as

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1           they don't damage it?

2    A.    That's correct.

3    Q.    If they have bins they can slide it into  
4           above the ground, that's fine with you, as  
5           long as they don't damage your furniture?

6    A.    That's correct.

7    Q.    Isn't the same thing true of these  
8           merchandising agreements, except for if they  
9           don't display your product in a prominent  
10          area, you're going to cancel that agreement,  
11          aren't you?

12   A.    We might cancel the agreement or we may not  
13          pay for it. We may leave the agreement  
14          intact and discuss another location. It  
15          doesn't always specifically say that it has  
16          to be here. It's not set out on a map, and  
17          I'm not taking this 2 square foot of floor  
18          space.

19   Q.    I didn't say you are.

20                    But it has to meet your  
21                    satisfaction or you don't pay for it?

22   A.    That's correct.

23   Q.    That's what the agreement says, doesn't it?

24   A.    That's correct.

25   Q.    It has to be prominently displayed or you

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1 don't pay for it, right?

2 A. That's correct.

3 Q. And to that extent, you have the right to  
4 dictate where the space is if you're going to  
5 pay for it?

6 A. That's correct. But I also have options to  
7 dictate other spaces. It's not etched in  
8 stone exactly where it has to be.

9 Q. You're not being responsive. Nobody has  
10 asked you a question right now.

11 A. All right.

12 Q. You can call a pig a cow all day long, but  
13 it's still going to taste like pork when you  
14 cook it, isn't it?

15 MS. VENSO: You're doing a good  
16 job.

17 Q. (By Mr. Taylor) Isn't it?

18 A. I don't feel like I need to respond to that.

19 MS. VENSO: We'll stipulate fat  
20 meat is greasy.

21 Here's exhibit 8, Rob.

22 MR. TAYLOR: Okay.

23 Q. (By Mr. Taylor) Let me hand you -- well,  
24 let's get these marked first.

25 MR. DAVID: Let's get -- those are

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1 the only copies I have. So let's not -- I  
2 mean, if you want to --

3 MS. VENSO: Oh, you don't want to  
4 mark those?

5 MR. DAVID: No, I don't want to  
6 mark those. If we can get copies of them, we  
7 can mark copies of them.

8 MR. TAYLOR: That's fine. I guess  
9 you'll have to make -- wow. Okay. We'll  
10 just give these --

11 MS. GALLAGHER: Do you want me to  
12 do it now?

13 MR. TAYLOR: Huh? No, we don't  
14 need to do it now. I just need a paper  
15 clip.

16 All right. Now, if you would --  
17 we'll give these to the court reporter. Just  
18 make copies of these front and back, when  
19 there are multiple copies -- I don't know if  
20 they're all the same.

21 THE WITNESS: They are. It would  
22 just be --

23 MR. TAYLOR: If they're multiple  
24 copies of all the same thing, we just need  
25 one copy of each one. But the front and back

1 of it may -- can you do front and back  
2 copying? And then return these to -- who do  
3 you want these --

4 MS. VENSO: We can do all of them.  
5 We can do those and these Bates stamped  
6 numbers you've read off.

7 MR. TAYLOR: Well, then, I've got  
8 to have some way to identify what all here is  
9 in Exhibit 8 so that we don't get in an  
10 argument later as to whether or not you've  
11 copied everything.

12 MS. VENSO: Well, do you want to  
13 get Kathy's office to do it now?

14 MR. TAYLOR: Kathy, do you mind  
15 doing that? Just have them make --

16 Q. (By Mr. Taylor) Let me ask you -- and then  
17 mark it.

18 MR. TAYLOR: When there's multiple  
19 copies, we just need one.

20 Q. (By Mr. Taylor) Mr. Spradley, let me hand  
21 you what's going to be marked as Exhibit 8 --  
22 or a copy that's going to be marked as  
23 Exhibit 8. And, if you would, tell us if  
24 that stack of exhibits reasonably and  
25 accurately represents all the different

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1 contract forms that were used by  
2 R. J. Reynolds Tobacco Company in Galveston  
3 County, Texas, for the last four years.

4 A. I would say it represents the majority. I  
5 couldn't say it represents all.

6 Q. What other type of -- excuse me.

7 A. I'm just --

8 Q. What other type of contracts would you have  
9 entered into -- would R. J. Reynolds Tobacco  
10 Company have entered into in Galveston  
11 County, Texas, other than those set forth in  
12 Exhibit 8?

13 A. We might have some little used contract that  
14 would be a variation of these. I guess what  
15 I'm saying here is that this is the -- a  
16 representative sample of the majority. I  
17 would say 95 percent plus of the contracts,  
18 merchandising contracts, signed between  
19 R. J. Reynolds and retailers in Galveston  
20 County during that time frame.

21 There may be something in this  
22 stack that does not match up here. And it  
23 would take us quite some time to go through  
24 those and pick those out. But this would  
25 represent -- and it would be not a

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1 significant difference in the contract  
2 conditions or guidelines. It may be that  
3 it's just a little used contract,  
4 merchandising contract.

5 Q. But if there are other types of contracts,  
6 could you find those for me and give them to  
7 your --

8 A. Right.

9 MS. VENSO: They're in here, if  
10 there are.

11 A. We can spend an hour here spreading this  
12 stuff out, and I can check off those that are  
13 representative and those that are not.

14 Q. (By Mr. Taylor) I've got a better idea.  
15 We'll finish your deposition. And while we  
16 take lunch, you can do that. And then when  
17 we come back --

18 MS. VENSO: No. He get's lunch.

19 Q. (By Mr. Taylor) -- to the deposition at  
20 1:00 o'clock --

21 A. I wouldn't do that.

22 Q. You can do that while we're taking somebody  
23 else's deposition this afternoon.

24 A. Okay.

25 MR. DAVID: No. When you finish

1 this deposition -- when you finish his  
2 questions, we're gone.

3 MR. TAYLOR: Fine. Mark every one  
4 of them and give them to the court reporter  
5 and she can make the copies and you can  
6 return them to them after you make the  
7 copies.

8 I'm not going to play this game  
9 with y'all. I refuse to do it.

10 MS. VENSO: We're not playing a  
11 game.

12 A. In good faith, I told you that I pulled  
13 representative samples of over 95 percent of  
14 those agreements. And I have not taken time  
15 to go through all these to find out if there  
16 may be one different. But they would not be  
17 significantly different. These are  
18 representative of contracts signed with large  
19 carton rack -- carton outlets and package  
20 outlets, et cetera.

21 Q. (By Mr. Taylor) All I'm asking you to do is  
22 to provide me with copies of other forms of  
23 contracts you have available for use in  
24 Galveston County.

25 A. Okay.

1 Q. If there are other forms of contracts that  
2 are available to use there, give them to me.

3 A. All right. Available to use but not  
4 necessarily signed there?

5 Q. I want to know if you've used them. If you  
6 know if you've used them, tell me.

7 A. Okay. There are some, what, 30 possibly  
8 different types agreement.

9 Q. That are all available for use in Galveston  
10 County?

11 A. That's correct.

12 Q. That's what I want.

13 A. Okay.

14 MS. GALLAGHER: Do you want copies  
15 of these now?

16 MR. DAVID: Can we provide them to  
17 you at a later date? You don't need them  
18 today, do you?

19 MR. TAYLOR: I don't need them  
20 today.

21 MS. GALLAGHER: But you want these  
22 now?

23 THE WITNESS: Who do I give these  
24 to?

25 MR. TAYLOR: No. I'll tell you

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1           what I'll do. If they will just provide me  
2           with copies of all contracts that are  
3           available for use in Galveston County, Texas,  
4           by R. J. Reynolds Tobacco Company, they can  
5           attach them to his deposition, since he's  
6           going to sign it; and they can get them to  
7           just send us copies of them so we'll have  
8           them in time to respond.

9                       We'll resolve that problem. Is  
10          that agreeable?

11                     MS. VENSO: Sure.

12                     MR. TAYLOR: And I also want, if  
13          you don't mind, to keep at least available to  
14          us either copies of C through Z or something  
15          in somebody's offices that we can get to if  
16          we need to go back to them.

17                     MR. DAVID: Since they're current  
18          contracts, they're going to have to go back  
19          out --

20                     MR. TAYLOR: I said copies.

21                     MR. DAVID: Copies we can get.

22                     MR. TAYLOR: If you can just get a  
23          copy to Norma's office, that's fine. I don't  
24          know that we'll need them. But if we do need  
25          to come back into them, then we don't have to

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1 go back through all this hassle.

2 MS. VENSO: Or we can at least keep  
3 segregated in your office from the Harris  
4 County contracts.

5 THE WITNESS: That's fine with me.  
6 I've separated them out.

7 We don't need this now?

8 MS. VENSO: No.

9 Q. (By Mr. Taylor) Do you have any other  
10 documents that reflect any ownership or  
11 possessory interest in any real or personal  
12 property situated in Galveston County, Texas,  
13 other than those that have already been  
14 produced?

15 A. No.

16 Q. How about 17? I guess that's in Box No. 1?

17 A. Well, it refers to invoices. And what  
18 invoices we have are the retailers'  
19 receipts. Same as called for in  
20 Paragraph 7.

21 Q. Okay. I'm going to go ahead and ask you some  
22 more questions. Then we're going to take --  
23 how long do you think it would take you to  
24 get me -- I'm going to want -- how big is 8B,  
25 the program event summary? How many

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1 documents are we talking about?

2 MR. DAVID: I think just four  
3 pages.

4 MR. TAYLOR: If it's just four  
5 pages --

6 A. It's in Box 8B. It's on the top.

7 Q. (By Mr. Taylor) Let's go ahead and ask some  
8 more questions and then we'll take a break  
9 and we'll go through your documents and we'll  
10 decide how we're going to handle that.  
11 Okay?

12 A. Okay.

13 Q. You are the person responsible for answering  
14 Spradley Exhibit No. 1?

15 MS. VENSO: He supplied the  
16 information for it.

17 A. Exhibit No. 1? I have to read it. I haven't  
18 seen this. I provided information on certain  
19 ones but not each and every one.

20 MS. VENSO: The lawyers made the  
21 decision how to answer, but he's the guy we  
22 got information from.

23 MR. TAYLOR: I understand.

24 Q. (By Mr. Taylor) R. J. Reynolds Tobacco  
25 Company has conducted business in Galveston

1 County, Texas, haven't they?

2 A. Admit.

3 Q. Any doubt in your mind that they've conducted  
4 business in Galveston County, Texas, since  
5 1900?

6 A. No.

7 Q. I mean, I know you weren't there in 1900.  
8 But at least since 1971, '72, you know  
9 doggone well R. J. Reynolds Tobacco Company  
10 has conducted business in Galveston County,  
11 Texas, do you not?

12 A. Yes, I do.

13 Q. They conduct business in Galveston County,  
14 Texas, today, do they not?

15 A. Yes, we do.

16 Q. You have been conducting, at least since 1972  
17 when you went to work for R. J. Reynolds  
18 Tobacco Company -- the business they have  
19 conducted in Galveston County has been on a  
20 regular basis, has it not?

21 A. Yes, it has.

22 Q. It's on a regular basis as we speak today,  
23 isn't it?

24 A. Yes, it is.

25 Q. You've permanently been in Galveston County

1 since 1972, have you not, R. J. Reynolds?

2 A. Permanently?

3 Q. Yes, sir. Permanently had people and  
4 permanently conducted business in Galveston  
5 County, have you not?

6 A. We've had employees who worked in Galveston  
7 County and also lived in Galveston County.

8 Q. At any time since you've been with  
9 R. J. Reynolds Tobacco Company, has R. J.  
10 Reynolds not done business in Galveston  
11 County, Texas?

12 A. Not to my knowledge.

13 Q. Do you know of any plans in the future to  
14 cease doing business in Galveston County,  
15 Texas?

16 A. No.

17 Q. At least as far as you know as the district  
18 manager, which includes Galveston County,  
19 that the intent of R. J. Reynolds Tobacco  
20 Company is to remain there for some  
21 indefinite period time in the future?

22 A. Well, remain in there meaning that we work in  
23 there and that we sell our -- our products  
24 are sold there.

25 Q. Do promotions there?

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- 1 A. Do promotions there.
- 2 Q. Do test markets there?
- 3 A. I couldn't tell you about any test markets.
- 4 We may never -- you know, I can't speak for a
- 5 test market because I don't know that they'll
- 6 ever have another one.
- 7 Q. Next Mardi Gras you'll be in there
- 8 cosponsoring another fiesta, whatever
- 9 they --
- 10 A. No, we won't.
- 11 Q. You won't. You're not going to do that
- 12 again?
- 13 A. I doubt it. I don't have any knowledge of
- 14 it, but I don't know that we would.
- 15 Q. When do you typically find out that's going
- 16 to happen?
- 17 A. Well, I don't -- I'm not the contact that
- 18 makes that decision.
- 19 Q. You don't know if you're going to do a Cinco
- 20 de Mayo deal this year or not?
- 21 A. Sure don't.
- 22 Q. You're not usually involved in those?
- 23 A. That is an outside agency function, and it's
- 24 coordinated by our marketing department out
- 25 of Winston-Salem. We have submitted some

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1 things here, and I had some personal  
2 knowledge of the activity because I saw some  
3 documents. But I had no personal involvement  
4 in the sampling or sponsorship of Cinco de  
5 Mayo or Fiestas Patrias or Mardi Gras.

6 Q. How many R. J. Reynolds Tobacco Company  
7 personnel or people are assigned to work in  
8 Galveston County on a regular basis?

9 A. We've gone through this before.

10 Q. Just the numbers.

11 A. Four full-time employees, four part-time  
12 employees, and two managers.

13 Q. As of July 31, 1992, you had two employees  
14 residing in Galveston County?

15 A. That's correct.

16 Q. How many managers did you have residing in  
17 Galveston?

18 A. One.

19 Q. One manager residing in Galveston County and  
20 two full-time employees?

21 A. Yes, residing. That's correct.

22 Q. So you have two managers for the Houston East  
23 division?

24 A. That's correct.

25 Q. One resides in Galveston County; one resides

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ELA

1 in Harris County?

2 A. That's correct.

3 Q. Half your management resides in Galveston  
4 County?

5 A. Resides. But that doesn't mean that he works  
6 half his time in that county.

7 Q. But he resides there?

8 A. That's correct.

9 Q. He resided there in July of 1992?

10 A. Yes.

11 Q. You had more than one employee that worked in  
12 Galveston County on a regular basis in July  
13 of 1992?

14 A. Yes.

15 Q. Now, how many of your people -- how many  
16 R. J. Reynolds Tobacco Company people that  
17 worked in Galveston County or resided in  
18 Galveston County in, say, July, 1992, to the  
19 present have had the actual authority to  
20 enter into these merchandising agreements or  
21 contracts?

22 A. Total of five that would have had -- five  
23 full-time people.

24 Q. You work part-time in Galveston County, do  
25 you not?

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1 A. Yes, occasionally.

2 Q. And the other manager works more in Galveston  
3 County than you do, I take it?

4 A. No more, no less.

5 Q. Okay.

6 A. He simply lives there. Our office is in  
7 Deer Park, Texas.

8 Q. So that each of you work part-time in  
9 Galveston County?

10 A. That's correct.

11 Q. I take it each of y'all have the authority to  
12 contract and bind R. J. Reynolds, do you  
13 not?

14 A. I ultimately have the accountability.

15 Q. But he has certain --

16 A. Certain latitudes.

17 Q. And then you have four or five other people  
18 that have certain latitudes?

19 A. That's correct.

20 Q. Who enter into agreements and bind  
21 R. J. Reynolds?

22 A. Only to the extent of the merchandising  
23 agreement, but they have no authority to do  
24 anything other than sign merchandising  
25 agreements.

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1 Q. And those merchandising agreements take  
2 various forms?

3 A. That's correct.

4 Q. And they certainly have the authority to pick  
5 which form they're going to use?

6 A. That's correct, under my instruction, as to  
7 what's appropriate.

8 Q. They don't call you each time they're going  
9 to enter one and so, "Oh, Mr. Spradley" --

10 A. Not necessarily. But I do approve each  
11 contract before it's entered into the  
12 record.

13 Q. I take it you would answer the questions the  
14 same way I've asked them regarding these  
15 people that live or work in Galveston County  
16 if I said December of ~~1992~~ instead of July of  
17 1992?

18 A. There's no significant business difference or  
19 change.

20 Q. Would you agree with me that R. J. Reynolds  
21 Tobacco Company markets its products in  
22 Galveston County, Texas?

23 A. Markets them?

24 Q. Yes, sir.

25 A. In the broad sense, yes. That's our

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1 function, is to market, meaning --

2 Q. What do you mean "in the broad sense,  
3 market"?

4 A. Well, marketing takes many forms. When --  
5 the job functions of marketing for us would  
6 be to have our products for sale in retail  
7 stores in Galveston County, to display them,  
8 to put up promotions, to coupon the product,  
9 things of that sort.

10 Q. And R. J. Reynolds Tobacco Company does every  
11 bit of that except the actual sale of the  
12 cigarettes to the retail store because you  
13 don't have the power to put the tax stamp on  
14 it?

15 A. Well, that -- I don't know that we've ever  
16 sold directly to the retail store in the  
17 existence of the company. As far as I know,  
18 it's always been done through wholesale  
19 grocery companies or jobbers.

20 Q. Because somebody has to put the tax stamps on  
21 them?

22 A. Well, that's correct. But somebody also has  
23 to deliver a case of beans to the store. You  
24 know, I wouldn't think the Del Monte salesman  
25 would be carrying around a case of beans to

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FLA

1 put up in the store. It's the same forms of  
2 distribution.

3 Q. But then y'all service the account?

4 A. That's correct, as do other manufacturers.

5 Q. My point is: As far as marketing activities  
6 overall, the only marketing activity that  
7 R. J. Reynolds Tobacco Company does not do in  
8 Galveston County, Texas, is make direct sales  
9 to retailer? All of the marketing activities  
10 R. J. Reynolds Tobacco Company does,  
11 correct?

12 A. Yes. But I think it's a very vague question.

13 Q. You distribute your products in Galveston  
14 County, do you not?

15 A. Through wholesalers. That's correct.

16 Q. But you also distribute them directly -- and  
17 you replace --

18 A. That's correct.

19 Q. -- out-of-date or damaged goods directly?

20 A. That's correct. We service the product.

21 Q. And then you make direct sales and direct  
22 distribution to the United States Coast Guard  
23 in Galveston County?

24 A. That's correct.

25 Q. Do you consider the Mardi Gras to be a social

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1 event?

2 A. I would say so.

3 Q. Y'all participated -- or R. J. Reynolds  
4 Tobacco Company participated in Mardi Gras  
5 this year as you described to me earlier, did  
6 you not?

7 A. They participated from a cosponsorship of one  
8 event, which was the fiesta concert in Moody  
9 Hall.

10 Q. That was a social event, was it not?

11 A. Yes.

12 Q. Mr. Spradley, did you happen to review those  
13 answers to request for admissions before they  
14 were filed with the Court, Exhibit 1?

15 A. Is this Exhibit 1?

16 Q. Yes, sir.

17 A. Certain -- I guess certain excerpts I did,  
18 for clarity as they regard our division  
19 operation.

20 Q. For example, did you review Page 14, response  
21 to No. 44?

22 A. Yes, I did.

23 Q. Did you review that response in its  
24 entirety?

25 A. Yes, I did.

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EXHIBIT

1 Q. Any part of it you disagree with or don't  
2 understand?

3 A. No.

4 Q. You understand it all completely?

5 A. Well, the thing that I do not understand is  
6 what is specified as an agent or  
7 representative under the Texas Civil  
8 Practices Code 15.037.

9 MS. GALLAGHER: Which page are you  
10 on?

11 Q. (By Mr. Taylor) You don't understand that  
12 part of it?

13 A. Well, I do not understand that point of law.  
14 I've never been exposed to that point of  
15 law.

16 Q. So you don't know whether that's correct or  
17 not, that part of the answer?

18 A. No. But I do know that it's correct after  
19 that point.

20 MS. VENSO: You know we've amended  
21 that one, Rob?

22 MR. TAYLOR: Well, we'll get to  
23 that in just a second.

24 Q. (By Mr. Taylor) Look at Exhibit No. 4. And  
25 I'm going to ask you again: Did you review

1 this document, the answer, before it was  
2 filed?

3 A. Yes, I did.

4 Q. What's the difference -- what was amended?  
5 What did you change between the time you  
6 filed the original response to the request  
7 for production on March 22nd of 1993 and your  
8 amended responses which were filed apparently  
9 yesterday?

10 A. There was a sentence added. We made no  
11 direct sales to consumers in Galveston  
12 County, Texas.

13 Q. Where was that added?

14 MR. DAVID: No. 2 that was added.  
15 This was added.

16 MS. VENSO: We also added that  
17 No. 2 when we said, "except as follows," to  
18 show that servicing kind of sale you've  
19 talked to him about.

20 Q. (By Mr. Taylor) You did make some -- you did  
21 directly supply certain cigarettes to  
22 retailers in Galveston County, Texas, didn't  
23 you?

24 A. Directly supply.

25 Q. Yes.

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FILE

1 A. We brought them in off of a company van and  
2 into the store.

3 Q. Isn't that supplying them?

4 A. That would be supplying them.

5 Q. We can't -- and I guess those were just kind  
6 of mixed in with whatever was there?

7 A. I'm sorry?

8 Q. Whatever cigarettes were already there, they  
9 were just kind of mixed in together?

10 A. Well, they were there to help the store out  
11 in the event they were out of a brand.

12 Q. If I walked into -- oh, if they were out of a  
13 brand, you would replace it, give them  
14 additional cigarettes?

15 A. If a store was out of Winston cigarettes and  
16 a representative called on the store, we  
17 would leave them some Winston cigarettes  
18 until which time they could get their order  
19 in from their normal supplier.

20 Q. Who do they pay for those Winston  
21 cigarettes?

22 A. The representative.

23 Q. So you did make those kind of direct sales?

24 A. That's correct.

25 Q. So it's not correct to say that you made no

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1 direct sales?

2 A. We made no direct sales to consumers.

3 Q. Well, it says, "RJR did not sell its  
4 cigarettes directly to any business entity  
5 located in Galveston County." And that's  
6 just not correct.

7 MS. VENSO: We say "except as  
8 follows." And that's where we tell you that  
9 we do.

10 A. Point 2: "From time to time R. J. Reynolds  
11 employees do provide cigarettes as a service  
12 to Galveston County retailers."

13 Q. (By Mr. Taylor) But provide is different  
14 than sell, isn't it?

15 A. We provide them as a service. We sell them  
16 as a service, but we're not directly making a  
17 profit off that sale. It's a matter of  
18 service to have the product there to help the  
19 retailer out until which time.

20 Q. You didn't mean to try to confuse us or  
21 mislead us by saying you at no time --

22 A. No, sir.

23 Q. -- made sales directly to retailers?

24 A. No, I did not.

25 Q. Because the truth of the matter is -- and, in

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1 fact, you do from time to time make sales to  
2 retailers?

3 A. We make sales, sir. But when we talk about  
4 selling that we profit from, we would not  
5 profit from that sale. The wholesaler would.

6 Q. I didn't ask you about -- did anything ask  
7 you about profits?

8 A. No. I'm just saying to me a sale is --

9 Q. When I tried to ask you about profits earlier  
10 made in Galveston County, you didn't have any  
11 information about that.

12 A. I don't have anything on the exact profits.

13 Q. Well, give me an approximation then.

14 A. I couldn't give you an approximation. When I  
15 say "profit," I speak of -- the sales  
16 representative does not profit from the  
17 sale.

18 Q. No, sir. What I'm trying to find out -- you  
19 as the district manager -- have I got the  
20 right term?

21 A. That's correct.

22 Q. -- for the Houston East division have no  
23 idea, cannot even give me any kind of  
24 estimate as to the gross volume of sales of  
25 R. J. Reynolds in Galveston County, Texas?

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1 A. It's not significant to me.

2 Q. That's not my question.

3 A. I could dig up probably records somewhere or  
4 run a report or get information from  
5 Winston-Salem regarding that, but that's not  
6 my primary accountability.

7 Q. Well, that's not my question to you.

8 A. All right.

9 Q. My question to you is: You cannot tell me --  
10 get anywhere in the ballpark, even give me  
11 any kind of educated guess -- as to the  
12 volume of sales of R. J. Reynolds Tobacco  
13 Company in Galveston County, Texas?

14 A. No, I can't.

15 Q. Or volume of cigarettes delivered?

16 A. No, I can't. Not off the top of my head.  
17 That's not a significant part of my duties.

18 Q. Let's look at Exhibit -- let me ask you a  
19 question. Let me ask you a question.

20 THE WITNESS: You need to help me  
21 out on that because I've read it, but I don't  
22 know the specifics --

23 MS. VENSO: Sure.

24 THE WITNESS: -- on what was  
25 changed.

1 Q. (By Mr. Taylor) Let me ask you question.  
2 Back on Request No. 44.

3 A. Yes, sir.

4 Q. Do-you remember awhile ago when I asked you  
5 if R. J. Reynolds conducted business in  
6 Galveston County, Texas, when you were under  
7 oath here --

8 A. Yes.

9 Q. -- as a district manager speaking on their  
10 behalf today?

11 A. That's correct.

12 Q. -- and you answered it "yes"?

13 A. That's correct.

14 Q. Is there any reason you couldn't answer  
15 Request No. 44 just "admitted"?

16 MS. VENSO: We thought that it was  
17 a legal response and --

18 MR. TAYLOR: I'm asking him. I'm  
19 asking him.

20 MS. VENSO: And we're letting him  
21 answer your questions. That's why I haven't  
22 objected. I think he can answer in the  
23 businessman's sense. But you're asking him  
24 to explain what his lawyer did. And I'm  
25 going to object to that.

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1 MR. TAYLOR: No. He said that he  
2 put the information -- gave the information  
3 in here. I'm going to ask you --

4 MS. VENSO: He doesn't make the  
5 decision whether to admit or deny, Rob.

6 Q. (By Mr. Taylor) Mr. Spradley, let me ask you  
7 this question. If I ask you a very simple  
8 question, "Did RJR or R. J. Reynolds Tobacco  
9 Company conduct business in Galveston County,  
10 Texas, on July 31st, 1992," what's your  
11 answer?

12 A. Conduct business?

13 Q. Yes, sir.

14 A. Yes. We admit that.

15 Q. Okay. That's fine. I didn't think you and I  
16 were having any difficulty on that one.

17 A. No. The point is --

18 THE WITNESS: And would you rather  
19 me --

20 MR. TAYLOR: It's not responsive.

21 THE WITNESS: Can I make a point?

22 MS. VENSO: No. It's fine.

23 Q. (By Mr. Taylor) Would you admit with me that  
24 one or more employees, agents, or  
25 representatives of R. J. Reynolds Tobacco

1 Company was assigned to work in Galveston  
2 County, Texas, on a regular basis?

3 A. That's correct.

4 Q. Would you admit that one or more employees,  
5 agents, or representatives of R. J. Reynolds  
6 Tobacco Company worked in Galveston County,  
7 Texas, on July 31st, 1992?

8 A. Yes.

9 MR. DAVENPORT: If you're reading  
10 numbers, would you call them out?

11 MR. TAYLOR: I beg your pardon?

12 MR. DAVENPORT: If you're reading  
13 numbers, would you call them out?

14 MR. TAYLOR: You really want me  
15 to?

16 MS. GALLAGHER: Sam, you call out  
17 the numbers so we can keep it straight.

18 MR. CRUSE: All right.

19 Q. (By Mr. Taylor) Would you agree with me that  
20 one or more employees, agents, or  
21 representatives of the defendant worked in  
22 Galveston -- Defendant R. J. Reynolds Tobacco  
23 Company worked in Galveston County, Texas, on  
24 December 8th of 1992?

25 A. Yes.

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1 MR. CRUSE: 78.

2 MR. DAVENPORT: Thanks.

3 Q. (By Mr. Taylor) Would you agree with me that  
4 one or more of those employees working on  
5 either July 31st of '92 or December 8th of  
6 1992 had at least some authority to  
7 contractually bind R. J. Reynolds Tobacco  
8 Company?

9 A. With regards to merchandising agreements  
10 only.

11 Q. That's some authority to contract, isn't it?

12 A. It is some. I'm just clarifying it.

13 Q. Would you agree with me that from nineteen --  
14 when you started working with R. J. Reynolds  
15 Tobacco Company to the present, without  
16 exception, that R. J. Reynolds Tobacco  
17 Company has consistently marketed and  
18 distributed its products through stores or  
19 other businesses located in Galveston County,  
20 Texas?

21 A. I will agree.

22 MR. TAYLOR: Why don't we go  
23 through the documents, and then I'll probably  
24 be finished.

25 We can take about five or ten

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1 minutes.

2 THE VIDEOGRAPHER: It's 11:47 a.m.  
3 We're off the record.

4  
5 (A recess was taken.)

6  
7 (The remainder of the deposition  
8 was not videotaped.)

9  
10 MR. TAYLOR: If y'all are agreeable  
11 to making for us copies of three or four  
12 representative documents of each category  
13 that we've asked for and which you've  
14 produced here, with the exception that if a  
15 category, you know, is, like, less than 20  
16 pages, give me the whole thing. But if we  
17 get into documents -- if it's three or four  
18 representative documents and provide those to  
19 us, and we'll attach those as -- or we'll  
20 just agree that they're, what, Exhibit 9 to  
21 the deposition. And then I'll pass the  
22 witness, if y'all are agreeable to doing  
23 that.

24 MS. VENSO: That's no problem.

25 MR. TAYLOR: And if we want to come

1 back and look at more documents, they'll be  
2 made available to us without having to do  
3 this again.

4 MR. SCARBORO: Can you tell me  
5 again what you wanted samples of?

6 MR. TAYLOR: They're going to go  
7 through each category of documents we've  
8 requested and give us three or four exemplary  
9 type --

10 MR. SCARBORO: "Exemplary," right.  
11 Samples of each --

12 MR. TAYLOR: -- samples of each  
13 type of document, with the exception that if  
14 we've got documents that are, like, 20 pages  
15 or less --

16 MR. SCARBORO: Right.

17 MR. TAYLOR: They said, for  
18 example, that 8B is only four or five pages,  
19 the whole thing. Otherwise, they'll just  
20 give us examples of each and then keep these  
21 available for us if we need to come back  
22 through them. And then we'll pass the  
23 witness.

24 MR. DAVID: Give as you few minutes  
25 to caucus.

1 MR. TAYLOR: Sure. No problem.

2

3 (A recess was taken.)

4

5 MR. TAYLOR: The only thing I want  
6 to know is if we have the agreement.

7 MS. VENSO: We sure do.

8 MR. TAYLOR: I pass the witness.

9

10

11

EXAMINATION

12

BY MS. VENSO:

13

Q. Are you a lawyer, Mr. Spradley?

14

A. No.

15

Q. Has anything you've given here today been a  
16 legal opinion or conclusion?

17

A. No.

18

MS. VENSO: That's all I have.

19

MR. TAYLOR: Anybody else have

20

anything?

21

MS. GALLAGHER: No.

22

23

(Deposition concluded at 12:00 p.m.)

24

25

(At conclusion of deposition the

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1 following proceedings occurred.)

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MR. TAYLOR: It's going to be stipulated and agreed that the method of distribution is the same for each of the defendant tobacco companies; that each of them have sales representatives that have the power to enter into -- what do you call those things? What do y'all want to call them?

MS. VENSO: Merchandising agreements.

MR. TAYLOR: -- merchandising agreements and bind their respective company; that each defendant, other than R. J. Reynolds -- you don't need to do this stuff -- will provide us --

MS. GALLAGHER: Or Brown & Williamson?

MR. TAYLOR: Brown & Williamson doesn't need to do this.

The others will have to provide us with a number of man-hours either on a daily or weekly basis that their sales representatives or other employees or representatives, or whatever you want to call

1           them, work in Galveston County; whether or  
2           not any of their sales representatives or  
3           other employees or personnel live in  
4           Galveston County; and whether or not they  
5           have an office in Galveston County.

6                     I guess we'll also, then, want from  
7           each of y'all representative copies of your  
8           merchandising -- I'm trying to get this  
9           document production.

10                    If you will give us gross sales  
11           figures for Galveston County -- I know they  
12           don't have it, but -- I guess y'all are  
13           agreeing also that on the advertising, that  
14           kind of stuff, is the same as theirs is in  
15           Galveston County?

16                   MR. SCARBORO: Yes. Philip Morris  
17           is.

18                   MR. DAVENPORT: I know Lorillard  
19           does it out of home office with some ad  
20           agencies. That's why we're going to --

21                   MR. TAYLOR: If there are any other  
22           significant differences between what  
23           Mr. Spradley said and the way y'all do it,  
24           then you need to tell me; and we'll address  
25           those issues. Otherwise, we're going to say

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1 they're substantially the same. Okay? Is  
2 that fair with everybody?

3 MR. SCARBORO: Yes.

4 MR. TAYLOR: We're going to want  
5 some copies of -- if you have any kind of --  
6 like, they may have some agreements on  
7 servicing in Galveston where their people are  
8 providing services to them, billboards, that  
9 kind of stuff. We're going to want  
10 representative copies of those kind of  
11 contracts and representative copies of your  
12 marketing agreements. And I can't think of  
13 anything else.

14 MR. DAVENPORT: You didn't ask for  
15 it. But they're going to make extra copies  
16 of it, I think. We're going to have copies  
17 of the stuff that would have been produced  
18 anyway. So if you want to send somebody  
19 down -- if you feel uncomfortable, send them  
20 down before noon and they can pick out  
21 whatever they want and go eat at Joe's  
22 Barbecue and then I'll make copies and give  
23 them to them before they leave.

24 MR. TAYLOR: Can you just keep them  
25 there for --

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1 MR. DAVENPORT: Yes.

2 MR. TAYLOR: I've got a problem  
3 sending somebody down before noon, this  
4 afternoon.

5 MR. DAVENPORT: I didn't mean --

6 MR. CRUSE: Well, we'll just  
7 provide you with what you've said here. Is  
8 that fair enough?

9 MR. DAVENPORT: I didn't mean noon  
10 today.

11 MR. TAYLOR: If on your documents  
12 that we've asked for, if y'all can either get  
13 them to Houston or Galveston, or either  
14 place, copies of them at least so that we can  
15 go through those if we feel like we need to  
16 and then just agree that we can use any  
17 documents for purpose of responding to the  
18 venue rather than having to take  
19 depositions.

20 MR. SCARBORO: Philip Morris'  
21 merchandising contracts are here, and we're  
22 just going to leave them where they are.  
23 They'll stay right here.

24 MR. TAYLOR: In Houston, you mean?

25 MR. SCARBORO: Yes.

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1 MR. TAYLOR: Or at Vinson &  
2 Elkins?

3 MR. SCARBORO: No. In Houston at  
4 the regional office. And if you want to be  
5 able to see them, we'll produce them.  
6 They're in file cabinets, and they'll stay  
7 there.

8 MR. TAYLOR: That's fine.

9 MR. SCARBORO: Could I make one  
10 suggestion? Could we get an expedited copy  
11 of the transcript so that I can have the  
12 person that we were going to produce read  
13 over the transcript with the idea in mind  
14 that the question you're asking is: Are  
15 there any significant differences?

16 MR. TAYLOR: Right. Then let us  
17 know that. Okay?

18 MR. CRUSE: Sounds good.

19 MR. DAVENPORT: Before you type the  
20 deposition, will you type the thing we just  
21 did and give it to them. And I understand --  
22 and we're not being sticklers on it. But at  
23 least I've got about eight items. If you  
24 think of something else --

25 MR. SCARBORO: Can we keep going

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1 here for a minute on the record? Is it  
2 agreed that at least temporarily, Mr. Taylor,  
3 the rest of the remaining depositions are  
4 canceled, subject to the agreement we've  
5 reached here?

6 MR. TAYLOR: Yes. And I really  
7 would appreciate it if each of you would have  
8 your corporate representatives or whoever  
9 you're going to produce read over this  
10 deposition transcript and tell me if there's  
11 anything that they significantly disagree  
12 with or there's any significant differences,  
13 and we can just address those as they come  
14 up.

15 Otherwise, we're going to assume --  
16 and I want everybody to agree that unless  
17 we're notified of any significant  
18 differences, we can rely on this deposition  
19 as being essentially the same as what  
20 everybody would say. Okay?

21 MR. SCARBORO: That's agreed.  
22 - - - - -  
23  
24  
25

1 THE STATE OF \_\_\_\_\_:  
2 COUNTY OF \_\_\_\_\_:

3 I, DAVID W. SPRADLEY, hereby  
4 certify that I have read the foregoing  
5 transcript of my testimony given in the  
6 foregoing numbered and styled case and that  
7 same is true and correct to the best of my  
8 knowledge and belief.

9 I further certify that any and all  
10 corrections have been made on a separate page  
11 and initialed by me.

12 This the \_\_\_\_\_ day of  
13 \_\_\_\_\_, 1993.

14 \_\_\_\_\_  
15 DAVID W. SPRADLEY

16 SUBSCRIBED AND SWORN TO BEFORE ME,  
17 this the \_\_\_\_\_ day of \_\_\_\_\_, 1993.

18 \_\_\_\_\_  
19 Notary Public in and for  
20 the State of \_\_\_\_\_

21 My Commission Expires \_\_\_\_\_

22 Job No. 93-421

23  
24  
25  
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1 THE STATE OF TEXAS :

2 I, BECKY SERRATO, Certified  
3 Shorthand Reporter in and for the State of  
4 Texas, hereby certify that this deposition  
5 transcript is a true record of the testimony  
6 given by the witness named herein, after said  
7 witness was duly sworn or affirmed by me.

8 I further certify that I am neither  
9 attorney nor counsel for, related to, nor  
10 employed by any of the parties to the action  
11 in which this testimony was taken. Further,  
12 I am not a relative or employee of any  
13 attorney of record in this cause, nor do I  
14 have a financial interest in the action.

15 Further certification requirements,  
16 if any, pursuant to the Rules will be  
17 certified to in the Supplemental Certificate  
18 after they have occurred.

19 the 31<sup>st</sup> Subscribed and sworn to on this,  
20 day of March, 1993.

21 Becky Serrato  
22 BECKY SERRATO, CCR  
23 Certificate No. 4008  
24 Expires December 31, 1994

25 My Notary Commission expires October 31, 1996